
Framework Agreement

FRAMEWORK AGREEMENT

-between-

(1) THE AUDITOR GENERAL FOR SCOTLAND AND ACCOUNTS
COMMISSION

ACTING THROUGH AUDIT SCOTLAND (THE “AUTHORITY”)

-and-

(2) XXX (THE “CONTRACTOR”)

-relating to the supply of-

EXTERNAL AUDIT OF PUBLIC BODIES IN SCOTLAND

-for the benefit of-

THE AUDITOR GENERAL FOR SCOTLAND, ACCOUNTS COMMISSION,
AUDIT SCOTLAND AND OTHER PUBLIC BODIES

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PREAMBLE:

- ONE The Authority requires the supply of Services to the Authority and Public Bodies
- TWO On 6 September 2021 the Authority's contract notice relating to the Services was published in Public Contracts Scotland with reference number SEP426610
- THREE On 25 November 2021 the Contractor completed its SPD
- FOUR On 6 September 2021 the Authority issued its ITT to potential Contractors (including the Contractor) in respect of the supply of Services
- FIVE On 25 November 2021 the Contractor submitted its Tender
- SIX On the basis of the Tender, the Authority has selected the Contractor among Other Framework Contractors, to supply the Services under this Framework Agreement
- SEVEN In accordance with the Public Contracts (Scotland) Regulations 2015, this Framework Agreement establishes Standard Terms of Supply under which Call-off Contracts may be entered into for the supply of Services
- EIGHT This Framework Agreement also includes:
- a Specification setting out the Services that the Contractor has undertaken to provide, including Service Levels setting out particular levels of service that the Contractor has undertaken to meet
 - a Pricing Schedule setting out details of the pricing of the Services
 - Award Procedures prescribing the mandatory procedures for entering into Call-off Contracts; and
 - Management Arrangements for the strategic management of the relationship between the Authority and the Contractor.

SECTION A

1. Definitions and Interpretation

1. In this Framework Agreement unless the context otherwise requires the following terms have the meanings given to them below:

- 1.1. **“Affiliate”** means in relation to a body corporate, any other entity which directly or indirectly controls, is controlled by, or is under direct or indirect control with, that corporate body from time to time.
- 1.2. **“Audited body”** means the body to which the Contractor has been appointed.
- 1.3. **“Authority”** means the Auditor General for Scotland and Accounts Commission, acting through Audit Scotland.
- 1.4. **“Authority Protected Information”** means any information provided by the Authority to the Contractor which:
 - carries a protective marking such as “Official”, “Secret” or “Top Secret”; or
 - is exempt information as set out in Part 2 of FOISA (disregarding for that purpose whether a provision of Part 2 does not confer absolute exemption within the meaning of section 2(2) of FOISA).
- 1.5. **“Authority Requirements”** means the operational requirements, functions and characteristics of the Framework set out in Schedule 1 (Specification).
- 1.6. **“Award Procedures”** means the procedures for entering into Call-off Contracts set out at Schedule 3.
- 1.7. **“Call-off Contract”** means any contract for the Supply of Services between the Authority and the Contractor entered into in accordance with the Award Procedures and based on the Standard Terms of Supply.
- 1.8. **“Commencement Date”** has the meaning given in clause 8.
- 1.9. **“Contracting Authority”** has the meaning given in regulation 2 of the Public Contracts (Scotland) Regulations 2015.
- 1.10. **“Contractor”** means XXX.
- 1.11. **“Contractor Sensitive Information”** means any information provided by the Contractor to the Authority (disregarding any protective marking or assertion of confidentiality) which is exempt information pursuant to sections 33(1) or 36, 38 or 39 of FOISA (having regard for that purpose to the public interest there might be in disclosing such information as referred to in section 2(1)(b) of FOISA).

- 1.12. **“Control”** has the meaning given in section 450 of the Corporation Tax Act 2010.
- 1.13. **“Controller”, “Processor”, “Data Subject” and “Data Subject Access Requests”** have the meanings given in the Data Protection Laws.
- 1.14. **“Data Protection Laws”** means any law, statute, subordinate legislation, regulation, order, mandatory guidance or code of practice, judgment of a relevant court of law, or directives or requirements of any regulatory body which relates to the protection of individuals with regard to the processing of Personal Data to which a Party is subject including the Data Protection Act 2018 and any statutory modification or re-enactment thereof and the UK GDPR (having the meaning given in the Data Protection Act 2018).
- 1.15. **“Default”** means any breach of the obligations of the Contractor (including but not limited to material breach) or any negligent act, omission, or statement of the Contractor in connection with or in relation to this Framework Agreement.
- 1.16. **“Employee Liabilities”** means all claims (whether in delict, contract, under statute or otherwise), demands, actions, orders, complaints, proceedings and any award, compensation, damages, tribunal awards, fine, loss, order, penalty, disbursement, payment by way of settlement and costs and expenses and legal costs reasonably incurred in connection with any claim or investigation (including any investigation by the Equality and Human Rights Commission or other enforcement, regulatory, or supervisory body and of implementing any requirements which may arise from such investigation) including:
- 1.16.1. claims for redundancy payments, unlawful deduction of wages, claims for equal pay, unfair, wrongful, or constructive dismissal compensation; and
 - 1.16.2. compensation for discrimination on grounds of sex, sexual orientation, race, disability, religion or belief, gender reassignment, marriage or civil partnership, pregnancy and maternity and age or less favourable treatment of part-time workers or fixed term employees.
- 1.17. **“Employee Liability Information”** has the meaning given in TUPE.
- 1.18. **“Environmental Information Regulations”** means the Environmental Information (Scotland) Regulations 2004.
- 1.19. **“Exit Management”** means the obligations and rights of the Parties to ensure a smooth transition of the Framework from the Contractor to the Authority or any Replacement Contractor as set out in Clauses 123. to 127. (Exit Management) and Schedule 8 (Exit Management).
- 1.20. **“Exit Plan”** means the exit management plan developed by the Contractor and approved by the Authority in accordance with Clauses 123. to 127. (Exit Management).

1.21. “Exit Management Date” means each of the following:

- the date of a Termination Notice; and
- if no Termination Notice has been served in relation to this Agreement except for any Partial Termination, the expiry of the later of the Initial Term and any extension of the Agreement agreed in writing.

1.22. “FOISA” means the Freedom of Information (Scotland) Act 2002.

1.23. “Force Majeure” means any event or occurrence which is outside the reasonable control of the Party concerned and which is not attributable to any act or failure to take preventative action by that Party, including industrial action, fire, flood, violent storm, pestilence, explosion, malicious damage, armed conflict, acts of terrorism, nuclear, biological or chemical warfare, or any other disaster, natural or man-made.

1.24. “Framework Agreement” or **“Agreement”** means this framework agreement between the Authority and the Contractor consisting of 157 clauses and 8 Schedules.

1.25. “IPR”, or “Intellectual Property Rights” means patents, inventions, trademarks, service marks, logos, design rights (whether registerable or otherwise), applications for any of the foregoing, copyright, database rights, domain names, trade or business names, moral rights and other similar rights or obligations whether registerable or not in any country (including but not limited to the United Kingdom) and the right to sue for passing off.

1.26. “ITT” means the Authority’s invitation to tender dated 6 September 2021.

1.27. “Law” means:

- any applicable statute or proclamation or any delegated or subordinate legislation;
- any enforceable community right within the meaning of section 2 of the European Communities Act 1972 "(as preserved under section 4 of the European Union Withdrawal Act 2018);
- any applicable guidance, direction, determination, or regulations with which the Authority and/or the Contractor is bound to comply;
- any applicable judgment of a relevant court of law which is a binding precedent in Scotland; and
- any requirements of any regulatory body.

in each case in force at any time during the period of the Framework Agreement in Scotland.

- 1.28. **“Management Arrangements”** means the arrangements for the strategic management of the relationship between the Authority and the Contractor, including arrangements for monitoring of the Contractor’s compliance with the Specification and Service Levels, the Award Procedures and the terms of this Framework Agreement, set out in Schedule 4.
- 1.29. **“Party”** to this Framework Agreement means either of the Authority or the Contractor and does not include any other party who may have the benefit of this Framework Agreement.
- 1.30. **“Personal Data”** has the meaning given in the Data Protection Laws.
- 1.31. **“Pricing Schedule”** means the details of the pricing of the Services as at the Commencement Date set out in Schedule 2.
- 1.32. **“Processing”** has the meaning given in the Data Protection Laws and cognate expressions shall be construed accordingly.
- 1.33. **“Relevant Transfer”** has the meaning given in regulation 2(1) of TUPE.
- 1.34. **“Replacement Contractor”** means any third-party contractor appointed by the Authority from time to time in succession to the Contractor.
- 1.35. **“Request for Information”** means a request for information within the meaning of section 8 of FOISA or the Environmental Information Regulations and any attempted or apparent such request.
- 1.36. **“Schedule”** means a schedule annexed to this Framework Agreement.
- 1.37. **“Services”** means the services as are to be supplied by the Contractor to the Authority as set out in the Specification.
- 1.38. **“Service Levels”** means the particular levels of service that the Contractor has undertaken to meet and identified as service levels in the Specification.
- 1.39. **“SPD”** means the Single Procurement Document completed by the Contractor and sent to the Authority on 25 November 2021.
- 1.40. **“Specification”** means the specification of the Services that the Contractor has undertaken to provide set out in Schedule 1.
- 1.41. **“Standard Terms of Supply”** means the standard terms and conditions for Call-off Contracts set out in Schedule 5.
- 1.42. **“Staff”** means all partners, members, employees, agents, consultants and individual contractors of the Contractor, and Affiliate of the Contractor and/or of any sub-contractor.
- 1.43. **“Sub-Contract”** means any contract between the Contractor and any third party, made wholly or substantially for the purpose of performing

(or contributing to the performance of) the whole or any part of this Framework Agreement.

- 1.44. **“Tender”** means the tender submitted by the Contractor to the Authority in response to the ITT dated 25 November 2021.
- 1.45. **“Termination Notice”** means a notice to terminate this Framework Agreement or part of the Framework either immediately or at a date specified in the notice.
- 1.46. **“Third country”** means a country or territory outside the United Kingdom.
- 1.47. **“TUPE”** means the Transfer of Undertakings (Protection of Employment) Regulations 2006.
- 1.48. **“Wilful Misconduct”** has the meaning articulated in *De Beers UK Ltd (formerly Diamond Trading Co Ltd) v Atos Origin IT Services UK Ltd* [2010] EWHC 3276 (TCC): “Wilful misconduct refers to conduct by a person who knows that he is committing, and intends to commit a breach of duty, or is reckless in the sense of not caring whether or not he commits a breach of duty... a default that is deliberate, in the sense that the person committing the relevant act knew that it was a default...”
- 1.49. **“Working Day”** means a day other than a Saturday, Sunday, or bank holiday in Scotland, within the meaning of the Banking and Financial Dealings Act 1971.
- 1.50. **“Working Hour”** means an hour between 0900 hours and 1700 hours on a Working Day.

2. The interpretation and construction of this Framework Agreement is subject to the following provisions:

- 2.1. words importing the singular meaning include, where the context so admits, the plural and vice versa;
- 2.2. words importing the masculine include the feminine and neuter;
- 2.3. reference to a clause is a reference to the whole of that clause unless stated otherwise;
- 2.4. references to any statute, enactment, order, regulation, or other similar instrument are construed as a reference to the statute, enactment, order, regulation, or instrument as amended by any subsequent enactment, modification, order, regulation, or instrument or re-enacted;
- 2.5. references to any person include natural persons and partnerships, firms and other incorporated bodies and all other legal persons of whatever kind and however constituted and their successors and permitted assignees or transferees;

- 2.6. the words “include”, “includes” and “including” are to be construed as if they were immediately followed by the words “without limitation”; and
- 2.7. headings are included in this Framework Agreement for ease of reference only and do not affect the interpretation or construction of this Framework Agreement.

3. Nature of this Agreement

3. This Agreement is a framework agreement within the meaning of regulation 2(1) of the Public Contracts (Scotland) Regulations 2015. Call-off Contracts are public contracts within the meaning of that regulation.

4. This Agreement is a multi-supplier framework agreement and the contractors that are party to it are the Framework Contractors. No other contractors are party to the Framework Agreement.

5. This Agreement is a multi-user framework agreement and the public body that is party to it is the Authority. No other public bodies are party to the Framework Agreement.

6. Save to the extent specifically provided for in this Agreement, the Contractor acknowledges that it is not the exclusive supplier of the Services to the Authority and as such no guarantee of work or volume of work has been granted by the Authority.

7. The Contractor acknowledges that Audited Bodies are separate legal persons and as such the Authority has no liability in relation to the performance or non-performance of other Audited Bodies' obligations under this Framework Agreement or any Call-off Contracts.

4. Period

8. The period of this Framework Agreement is from and including 1 March 2022 (the “Commencement Date”) to and including 1 March 2027, unless it is terminated earlier or extended under Clause 9.

9. The Authority may, by giving notice to the Contractor, extend the period of the Framework Agreement to a date falling no later than seven years from the Commencement Date. Subject to that constraint, the Authority may extend the period of the Framework Agreement on more than one occasion.

10. The Framework Agreement duration is set to five years with an option to extend up to two further years so that appointment periods are in line with the rotation requirements of the Ethical Standard, minimise disruption caused by rotation and therefore maximise value for money.

11. The period of Call-off Contracts is addressed in the Standard Terms of Supply. The period of a Call-off Contract may continue notwithstanding that the Framework Agreement has expired or terminated.

5. Break

12. The Authority may terminate the Contractor's interest in the Framework Agreement at any time by giving not less than 3 months' notice to the Contractor.

6. Specification and Service Levels and Cyber Security Requirements

13. The Specification sets out the Services that the Contractor has undertaken to provide. The Specification includes Service Levels setting out particular levels of service that the Contractor has undertaken to meet.

14. The Contractor shall comply with Schedule 11 (Cyber Security Requirements).

7. Price

15. The Pricing Schedule sets out details of the pricing of the Services as at the Commencement Date.

16. The prices in the Pricing Schedule may be varied in accordance with the arrangements set out in Schedule 4 Management Arrangements.

17. Accordingly, the Contractor may not unilaterally increase the prices in the Pricing Schedule.

8. Award Procedures

18. The Award Procedures may be invoked by the Authority and Call-off Contracts may be entered into at any time during the period of the Framework Agreement.

19. But the Award Procedures may not be invoked, and Call-off Contracts may not be entered into with the Contractor if:

- the period of the Framework Agreement has expired;
- the Contractor's interest in the Framework Agreement has been terminated; or
- the Contractor's appointment to provide Services to the Authority has been suspended in accordance with clause 23. (Management Arrangements).

20. The Authority and the Contractor must comply with the Award Procedures and must establish each Call-off Contract without amendment to the Standard Terms of Supply.

21. The Contractor must maintain the capacity to enter into and perform Call-off Contracts throughout the period of the Framework Agreement.

9. Management Arrangements

22. The Management Arrangements set out the arrangements for the strategic management of the relationship between the Authority and the Contractor, including arrangements for monitoring of the Contractor's compliance with the Specification, the Service Levels, the Award Procedures and the terms of this Framework Agreement.

23. The Authority may by notice to the Contractor suspend the Contractor's appointment to provide Services to the Authority for a notified period of time:

23.1. if the Authority becomes entitled to terminate this Framework Agreement under clauses 114. to 119. (Termination Rights) or 120. to 122. (Termination on Insolvency or Change of Control); or

23.2. in any other circumstance provided for in the Management Arrangements.

24. Suspension under clause 23. shall terminate upon cessation of all of any circumstances referred to in subclauses 23.1 and 23.2.

25. The Contractor must continue to perform existing Call-off Contracts during any period of suspension under clause 23. .

10. Official Secrets Acts

26. The Contractor undertakes to abide and procure that the Contractor's employees abide by the provisions of the Official Secrets Acts 1911 to 1989.

SECTION B

11. Contractor's Status

27. At all times during the term of this Framework Agreement the Contractor is an independent Contractor and nothing in this Framework Agreement establishes a contract of employment, a relationship of agency or partnership or a joint venture between the Parties. Accordingly, neither Party is authorised to act in the name of, or on behalf of, or otherwise bind the other Party save as expressly permitted by the terms of this Framework Agreement.

12. Notices

28. Any notice or other communication which is to be given by a Party to the other under this Framework Agreement must be:

- given in writing;
- addressed in accordance with clause 30. ; and
- sent by letter (delivered by hand, first class post or by recorded delivery or special delivery) or e-mail.

29. Provided the relevant communication is not returned or rejected as undelivered, the notice or communication is deemed to have been given:

- 2 Working Days after the day on which the letter was posted; or
- 4 Working Hours, in the case of e-mail.

30. For the purposes of this clause, the address of each Party is:

- For the Authority:
Audit Scotland
4th Floor
102 West Port
Edinburgh
EH3 9DN
For the attention of Elaine Boyd
Tel: 0131 625 1500
E-mail: info@audit-scotland.gov.uk
- For the Contractor:
XXX
XXX
XXX
For the attention of: XXX
Tel: XXX or XXX
E-mail: xxx

31. Either Party may change its address details by serving a notice in accordance with this clause.

13. Recovery of Sums Due

32. Wherever under this Framework Agreement any sum of money is recoverable from or payable by the Contractor to the Authority, the Authority may deduct that sum from any sum due to the Contractor whether under a Call-off Contract or otherwise.

14. Data Protection

33. The Contractor will, in conjunction with the Authority and in its own right and in respect of the Services, ensure it will be compliant with the Data Protection Laws and that it shall only share Personal Data with the Authority where it is fair and lawful to do so.

34. Both Parties agree to negotiate in good faith any such amendments to this Framework Agreement that may be required to ensure that both Parties meet all their obligations under Data Protection Laws. The provisions of these clauses 33. to 37. are without prejudice to any obligations and duties imposed directly on the Parties under Data Protection Laws and the Parties agree to comply with those obligations and duties.

35. The Parties acknowledge that the Contractor may Process Personal Data in delivery of Services under a Call-off Contract under this Framework Agreement. For the purposes of any such Processing, the Parties agree that the Contractor acts as an independent Controller in relation to the Personal Data obtained as part of its audit work.

36. The Contractor will provide the Authority with the contact details of its data protection officer or other designated individual with responsibility for data protection and privacy to act as the point of contact for the purpose of observing its obligations under the Data Protection Laws.

37. To comply with section 31(3) of the Public Services Reform (Scotland) Act 2010, the Authority publishes an annual statement of all payments over £25,000. The Contractor should note that where a payment is made in excess of £25,000 there will be disclosure (in the form of the name of the payee, the date of the payment, the subject matter and the amount of payment) in both the monthly report and the annual Public Services Reform (Scotland) Act 2010 statement.

15. Transparency and Freedom of Information

38. The Contractor acknowledges that the Authority is subject to the requirements of FOISA and the Environmental Information Regulations. The Contractor shall:

- 38.1.** provide all necessary assistance and cooperation as the Authority may reasonably request to enable the Authority to comply with its obligations under FOISA and Environmental Information Regulations;

- 38.2.** transfer to the Authority all Requests for Information relating to this Agreement that the Contractor receives as soon as practicable and in any event within 2 Working Days of receipt, or if the Contractor cannot practicably provide such Information within 2 Working Days, the Contractor must at least inform the Authority and provide an explanation within 2 Working Days of receiving the Request for Information;
- 38.3.** provide the Authority with a copy of all information held on behalf of the Authority which is requested in a Request for Information and which is in the Contractor's possession or control. The information must be provided within 5 Working Days (or such other period as the Authority may reasonably specify) in the form that the Authority requires; and
- 38.4.** not respond directly to a Request for Information addressed to the Authority unless authorised in writing to do so by the Authority.
- 39.** If the Request for Information appears to be directed to information held by the Authority, the Contractor must promptly inform the applicant in writing that the Request for Information can be directed to the Authority.
- 40.** If the Authority receives a Request for Information concerning the Framework Agreement, the Authority is responsible for determining at its absolute discretion whether the information requested is to be disclosed to the applicant or whether the information requested is exempt from disclosure in accordance with FOISA or the Environmental Information Regulations.
- 41.** The Contractor acknowledges that the Authority may, acting in accordance with the Authority's Code of Practice on the Discharge of Functions of Public Authorities issued under section 60(5) of FOISA (as may be issued and revised from time to time), be obliged under FOISA or the Environmental Information Regulations to disclose information requested concerning the Contractor or the Framework Agreement:
- 41.1.** in certain circumstances without consulting the Contractor, or
- 41.2.** following consultation with the Contractor and having taken its views into account.
- 42.** Where 41.1 applies the Authority must take reasonable steps, if practicable, to give the Contractor advance notice of the fact of disclosure or, failing that, draw the fact of disclosure to the attention of the Contractor after such disclosure to the extent that it is permissible and reasonably practical for it to do.
- 43.** Where a Request for Information concerns Contractor Sensitive Information specified in Schedule 7 (having regard to the justifications and durations set out there), the Authority must take reasonable steps, where practicable, to consult with the Contractor before disclosing it pursuant to a Request for Information.
- 44.** The Contractor agrees that any further Information it holds that is reasonably relevant to or that arises from the provision of the Services shall be provided to the Authority upon request, unless the cost of doing so would exceed the appropriate limit prescribed under section 12 of FOISA. The

Authority may disclose such information under FOISA and the EIRs and may (except for Commercially Sensitive Information and Confidential Information, (subject to clause 51.)) publish such Information. The Contractor shall provide to the Authority within 5 working days (or such other period as the Authority may reasonably specify) any such Information requested by the Authority.

16. Authority Protected Information

45. The Contractor must:

- 45.1.** treat all Authority Protected Information as confidential and safeguard it, accordingly, implementing appropriate technical and organisational measures to protect Authority Protected Information against disclosure;
- 45.2.** only use the Authority Protected Information for the purposes of performing its obligations under the Framework Agreement;
- 45.3.** only disclose the Authority Protected Information to such Contractor Staff that are directly involved in the performance of the Framework Agreement and need to know the information; and
- 45.4.** not disclose any Authority Protected Information without the prior written consent of the Authority.

46. The Contractor must immediately notify the Authority of any breach of security concerning the Authority Protected Information. The Contractor must fully co-operate with the Authority in any investigation that the Authority considers necessary to undertake as a result of any such breach of security.

47. Clause 45. does not apply to the extent that:

- disclosure is required by law, regulatory requirement or by order of any competent court or tribunal;
- information is in the possession of the Contractor without restriction as to its disclosure prior to its disclosure by the Authority;
- information is obtained from a third party (who lawfully acquired it) without restriction as to its disclosure;
- information is already in the public domain at the time of disclosure otherwise than by a breach of the Framework Agreement; or
- information is independently developed without access to the Authority Protected Information.

48. Breach of these clauses 45. to 48. or the Official Secrets Acts 1911 to 1989 by the Contractor is a material breach for the purposes of clause 114. (Termination Rights).

17. Contractor Sensitive Information

49. The Authority must:

- 49.1. treat all Contractor Sensitive Information as confidential and safeguard it accordingly; and
- 49.2. not disclose any Contractor Sensitive Information to any other person without the prior written consent of the Contractor.

50. Clause 49.1 does not apply to the extent that:

- 50.1. disclosure is required by law, regulatory requirement or by order of any competent court or tribunal;
- 50.2. information is in the possession of the Authority without restriction as to its disclosure prior to its disclosure by the Contractor;
- 50.3. information is obtained from a third party (who lawfully acquired it) without restriction as to its disclosure;
- 50.4. information is already in the public domain at the time of disclosure otherwise than by a breach of the Framework Agreement; or
- 50.5. information is independently developed without access to the Contractor Sensitive Information.

51. Nothing in this Framework Agreement prevents the Authority from disclosing any Contractor Sensitive Information or any other information concerning the Contractor or the Framework Agreement:

- 51.1. pursuant to a Request for Information concerning the information (see clause 38. to 44. (Transparency and Freedom of Information));
- 51.2. in accordance with the Authority's publication scheme (within the meaning of section 23 of FOISA) as reviewed from time to time;
- 51.3. in accordance with the requirements of Part 3 of the Public Services Reform (Scotland) Act 2010;
- 51.4. in accordance with any future policies of the Authority concerning the routine disclosure of government information in the interests of transparency;
- 51.5. to any consultant, contractor or other person engaged by the Authority, for example to conduct a gateway review;
- 51.6. in response to a Parliamentary Question from a Member of the Scottish Parliament, a Member of the United Kingdom Parliament or any other department, office or agency of Her Majesty's Government in Scotland or the United Kingdom, and their servants or agents, when disclosing such information to either the Scottish Parliament or the United Kingdom Parliament it is recognised and agreed by both parties that the Authority shall if the Authority sees fit disclose such information but is unable to impose any restrictions upon the information that the Authority provides to Members of the Scottish Parliament, or Members of the United Kingdom Parliament; or

51.7. for the purpose of any examination by any auditors of the Authority (including an auditor appointed to audit the Authority by the Scottish Commission for Public Audit) of the economy, efficiency and effectiveness with which the Authority has used its resources.

52. The Contractor consents to the publication of the Framework Agreement by the Authority, subject to such redactions as the Authority may decide to make. The Authority may consult with the Contractor to inform its decisions concerning redaction (for example to exclude any Contractor Sensitive Information) but any decisions taken by the Authority are final and conclusive.

18. Audit

53. The Contractor must retain and maintain until 5 years after the end of the Framework Agreement period full and accurate records of the Framework Agreement including the Orders placed, the Services provided, and payments made and reimbursed under it.

54. The Contractor must on request, and without any charge to the Authority, afford the Authority, or the Authority's representatives, such access to those records as may reasonably be requested by the Authority in connection with the Framework Agreement.

19. Publicity

55. The Contractor must not make any press announcement or otherwise publicise the Framework Agreement in any way, except with the written consent of the Authority.

SECTION C

20. Key Individuals

56. The Contractor acknowledges that the Key Individuals are essential to the proper provision of the Services to the Authority.

57. The Key Individuals must not be released from providing the Services without the approval of the Authority, except by reason of long-term sickness, maternity, paternity, adoption or parental leave, termination of employment or equivalent extenuating circumstances. Where such extenuating circumstances arise or are foreseeable, the Contractor must immediately give notice of that fact to the Authority.

58. The Contractor may propose a replacement to a Key Individual (and must do so when a Key Individual is to be released from providing the Services), in which case:

- appropriate arrangements must be made to minimise any adverse impact on the Framework Agreement which could be caused by the change in Key Individuals (including, wherever possible, a transfer period of sufficient duration to allow for the transfer of know-how and skills); and
- the replacement must be of at least equal status and of equivalent qualifications, experience, training, and skills to the Key Individual being replaced and must be fully competent to carry out the responsibilities of that person in relation to the Services.

59. Any proposed replacement to a Key Individual is subject to the approval of the Authority. Subject to the Contractor's compliance with this clause, the Authority must not unreasonably withhold such approval.

21. Offers of Employment

60. For the duration of the Framework Agreement and for a period of 12 months thereafter the Contractor must not employ or offer employment to any of the Authority's employees who have been associated with the Framework Agreement and/or the contract management of the Framework Agreement without the Authority's prior approval.

61. This clause does not prevent the Contractor from employing or offering employment to any person who has applied for employment in response to an advertisement placed in the normal course of business and not placed with the objective of soliciting the Authority's employees.

22. Staff transfer at commencement

62. The Parties agree that the commencement of the provision of the Services by the Contractor does not involve a Relevant Transfer.

23. Staff transfer on expiry or termination

63. The Parties agree that the ceasing of the provision of the Services by the Contractor does not involve a Relevant Transfer.

24. Security

64. The Contractor must comply with the Authority's policies concerning Disclosure Scotland clearance and such modifications to those policies or replacement policies as are notified to the Contractor from time to time.

SECTION D

25. Parties' pre-existing Intellectual Property Rights

65. Except as expressly provided for in the Framework Agreement, neither Party acquires any interest in or license to use the other Party's IPR as they subsist at the Commencement Date or as developed independently of the Framework Agreement.

26. Claims relating to Intellectual Property Rights

66. The Contractor must not infringe any IPR of any third party in providing the Services or otherwise performing its obligations under the Framework Agreement and must ensure that the provision of the Services and the use or possession of the Deliverables does not infringe such IPR.

67. The Contractor must promptly notify the Authority if any claim or demand is made or action brought against the Contractor for infringement or alleged infringement of any IPR which may affect the use or possession of the Deliverables or which may affect the provision of the Services.

68. Where a claim to which this clause applies is made, the Contractor must, at its expense, use its best endeavours to:

68.1. modify the Services or Deliverables or substitute alternative Services or Deliverables (in any case without reducing performance or functionality) so as to avoid the infringement or alleged infringement of the IPR; or

68.2. procure the grant of a licence or licences from the pursuer, claimant, or complainer, on terms acceptable to the Authority, so as to avoid the infringement or alleged infringement of the IPR of the pursuer, claimant, or complainer.

69. The Contractor must not without the consent of the Authority make any admissions which may be prejudicial to the defence or settlement of any claim to which this clause applies.

27. Assignment and Change of Control

70. The Contractor may not assign its interest in the Framework Agreement without the prior written consent of the Authority.

71. The Contractor must notify the Authority:

71.1. whenever it proposes to undergo a change of Control, or a change of control is likely to occur;

71.2. immediately following a change of Control that has occurred; and

71.3. where it proposes to make any change to its sub-contractor named by the Contractor in its tender.

72. Subject to clause 74. , the Authority may assign, novate or otherwise dispose of its rights and obligations under the Framework Agreement or any part thereof to:

72.1. any Contracting Authority; or

72.2. any other body established by the Crown or under statute in order substantially to perform any of the functions that had previously been performed by the Authority; or

72.3. any private sector body which substantially performs the functions of the Authority, provided that any such assignation, novation or other disposal shall not increase the burden of the Contractor's obligations under the Framework Agreement.

73. Any change in the legal status of the Authority such that it ceases to be a Contracting Authority shall not, subject to clause 74. , affect the validity of the Framework Agreement. In such circumstances, the Framework Agreement shall bind and inure to the benefit of any successor body to the Authority.

74. If the rights and obligations under the Framework Agreement are assigned, novated or otherwise disposed of pursuant to clause 72. to a body which is not a Contracting Authority or if there is a change in the legal status of the Authority such that it ceases to be a Contracting Authority (in the remainder of this clause both such bodies being referred to as the "**Transferee**"):

74.1. the rights of termination of the Authority in clauses 114. to 119. (Termination Rights) and 120. to 122. (Termination on Insolvency and Change of Control) shall be available to the Contractor in the event of respectively, the bankruptcy or insolvency, or Default of the Transferee; and

74.2. the Transferee shall only be able to assign, novate or otherwise dispose of its rights and obligations under the Framework Agreement or any part thereof with the prior consent in writing of the Contractor.

75. The Authority may disclose to any Transferee any Confidential Information of the Contractor which relates to the performance of the Contractor's obligations under the Framework Agreement. In such circumstances the Authority shall authorise the Transferee to use such Confidential Information only for purposes relating to the performance of the Contractor's obligations under the Framework Agreement and for no other purpose and shall take all reasonable steps to ensure that the Transferee gives a confidentiality undertaking in relation to such Confidential Information.

28. Sub-Contracting

76. The Contractor may not sub-contract its obligations under the Framework Agreement to other sub-contractors without the prior written consent of the Authority. Sub-contracting of any part of the Framework Agreement shall not relieve the Contractor of any obligation or duty attributable to the Contractor

under the Framework Agreement. The Contractor shall be responsible for the acts and omissions of its sub-contractors as though they are its own.

77. Where the Contractor enters into a sub-contract the Contractor must ensure that a provision is included which:

77.1. requires payment to be made of all sums due by the Contractor to the sub-contractor within a specified period not exceeding 30 days from the receipt of a valid invoice as defined by the sub-contract requirements and provides that, where the Authority has made payment to the Contractor in respect of Services and the sub-contractor's invoice relates to such Services then, to that extent, the invoice must be treated as valid and, provided the Contractor is not exercising a right of retention or set-off in respect of a breach of contract by the sub-contractor or in respect of a sum otherwise due by the sub-contractor to the Contractor, payment must be made to the sub-contractor without deduction;

77.2. notifies the sub-contractor that the sub-contract forms part of a larger contract for the benefit of the Authority and that should the sub-contractor have any difficulty in securing the timely payment of an invoice, that matter may be referred by the sub-contractor to the Authority; and

77.3. is in the same terms as that set out in this clause 77. (including this clause 77.3) subject only to modification to refer to the correct designation of the equivalent party as the Contractor and sub-contractor as the case may be.

78. The Contractor shall include in every sub-contract:

78.1. a right for the Contractor to terminate that sub-contract if the relevant sub-contractor fails to comply in the performance of its contract with legal obligations in the fields of environmental, social or employment law or if any of the termination events (involving substantial modification of the Contract or contract award despite the existence of exclusion grounds specified in clause 117. (Termination Rights) occur; and

78.2. a requirement that the sub-contractor includes a provision having the same effect as 78.1 in any sub-contract which it awards.

79. Where requested by the Authority, copies of any sub-contract must be sent by the Contractor to the Authority as soon as reasonably practicable.

80. Where the Contractor proposes to enter into a sub-contract it must:

80.1. advertise its intention to do so in at least one trade journal and at least one newspaper circulating in the relevant local authority area; and

80.2. follow a procedure leading to the selection of the sub-contractor which ensures reasonable competition following principles of equal treatment, non-discrimination, and transparency and which ensures that such procedure is accessible by small and medium enterprises.

29. Amendment

81. The Framework Agreement may be amended only by the written agreement of both Parties. Accordingly, the Contractor may not unilaterally amend the Framework Agreement.

82. Clauses 15. to 17. (Price) make special provision for the variation of the Pricing Schedule.

SECTION E

30. Warranties and Representations

83. The Contractor warrants and represents that:

- 83.1.** it has full capacity and authority and all necessary consents (including where its procedures so require, the consent of its parent company) to enter into and perform its obligations under the Framework Agreement and that the Framework Agreement is executed by a duly authorised representative of the Contractor;
- 83.2.** in entering the Framework Agreement, it has not committed any offence under the Bribery Act 2010 or of fraud or uttering at common law or any other kind referred to in the Public Contracts (Scotland) Regulations 2015;
- 83.3.** it has not committed any breach of the Employment Relations 1999 Act (Blacklists) Regulations 2010 or section 137 of the Trade Union and Labour Relations (Consolidation) Act 1992, or committed any breach of the Data Protection Laws by unlawfully processing personal data in connection with any blacklisting activities;
- 83.4.** as at the Commencement Date, all information contained in the SPD and Tender remains true, accurate and not misleading, save as may have been specifically disclosed in writing to the Authority prior to execution of the Framework Agreement;
- 83.5.** no claim is being asserted and no litigation, alternative dispute resolution procedure or administrative proceeding is presently in progress or, to the best of its knowledge and belief, pending or threatened against it or any of its assets which will or might have a material adverse effect on its ability to perform its obligations under the Framework Agreement;
- 83.6.** it is not subject to any contractual obligation, compliance with which is likely to have a material adverse effect on its ability to perform its obligations under the Framework Agreement;
- 83.7.** no proceedings or other steps have been taken and not discharged (nor, to the best of its knowledge, are threatened) for the winding up of the Contractor or for its dissolution or for the appointment of a receiver, administrative receiver, liquidator, manager, administrator or similar officer in relation to any of the Contractor's assets or revenue; and
- 83.8.** as at the Commencement Date, all insurances that must be affected under the Standard Terms of Supply have been affected.

31. Indemnity

84. Without prejudice to any rights or remedies of the Authority, and subject to Clause 88. the Contractor will indemnify the Authority against any and all claims, proceedings, actions, damages, costs, expenses and any other loss and liabilities (Loss”) which may arise out of, or in consequence of, or in connection with any:

- 84.1.** claim for infringement of any third party's Intellectual Property Rights arising out of the Authority and/or a permitted third party recipient's use or possession of any materials provided to it by the Contractor under or in connection with this Framework Agreement (an "IPR Infringement Claim");
- 84.2.** claim by a third party against the Authority arising from any act or omission of the Contractor, its agents or employees; and/or
- 84.3.** breach of Law by the Contractor, its agents or employees.
- 84.4.** The Authority shall take reasonable steps to mitigate any Loss.

85. In relation to any IPR Infringement Claim, the Authority shall:

- 85.1.** as soon as reasonably practicable, give written notice of the IPR Infringement Claim to the Contractor, specifying the nature of the IPR Infringement Claim in reasonable detail;
- 85.2.** not make any admission of liability, agreement or compromise in relation to the IPR Infringement Claim without the prior written consent of the Contractor (such consent not to be unreasonably conditioned, withheld or delayed);
- 85.3.** give the Contractor reasonable information and assistance for the purpose of assessing the IPR Infringement Claim; and
- 85.4.** take such action as the Contractor may reasonably request to avoid, dispute, compromise or defend the IPR Infringement Claim.

86. Without prejudice to clause 84. , if an IPR Infringement Claim arises, then the Contractor may at its sole cost and expense modify or replace any product or deliverable so that any offending element is removed, provided that such modification or replacement product does not adversely impact on the functionality or use of that product or deliverable.

87. Subject to clause 84. , and solely in respect of Personal Data Protection obligations, the Contractor's liability to the Authority under clause 84. shall not exceed the sum of Five Million Pounds (£5,000,000) Sterling in respect of any one breach.

32. Limitation of Liability

88. Neither Party is liable to the other Party under the Framework Agreement for any:

- 88.1.** loss of profits, business, revenue, or goodwill; or

88.2. indirect or consequential loss or damage.

89. But clause 88. does not exclude any liability of the Contractor for additional operational, administrative costs or expenses or wasted expenditure resulting from the Default of the Contractor.

90. But neither Party excludes or limits liability to the other Party for:

90.1. death or personal injury caused by its negligence;

90.2. misrepresentation; and

90.3. any breach of any obligations implied by section 12 of the Sale of Goods Act 1979 or sections 2 or 11B of the Supply of Goods and Services Act 1982.

Grants certification

91. Certification of Housing Benefit Subsidy and Non-Domestic Rate Income for councils is for the benefit of the Authority, the audited body and the grant awarding body.

92. The Contractor will perform grant certification work with reasonable skill and care and accept responsibility to the Authority, the audited body and the grant awarding body for losses, damages, costs or expenses ('losses') caused by its breach of contract, negligence or Wilful Misconduct, subject to the following provisions.

93. The Contractor will not be responsible or liable if such losses are due to the provision of false, misleading or incomplete information or documentation or due to the acts or omissions of any person other than the Contractor, except where, it would have been reasonable for the Contractor to discover such defects in the course of performing the work in accordance with the technical guidance note prepared by Audit Scotland for the grant.

94. The Contractor accepts liability without limit for the consequences of its own fraud and for any other liability which it is not permitted by law to limit or exclude.

95. Subject to clause 94. above, the aggregate liability of the Contractor whether in contract, delict (including negligence) or otherwise, to the Authority, arising from or in connection with grant certification under this Framework, is capped at £500,000. Any claims, whether in contract, negligence or otherwise, must be formally commenced within 6 years after the party bringing the claim becomes aware (or ought reasonable to have become aware of the facts which give rise to the action and in any event no later than 6 years after the relevant report was issued (or, if no report was issued, when the relevant report was due to be published). This expressly overrides any statutory provision which would otherwise apply.

33. Insurance

96. The Contractor must affect and maintain with a reputable insurance company:

- professional indemnity insurance in the sum of not less than ten million pounds sterling (£10,000,000); and
- employer's liability insurance in the sum of not less than five million pounds sterling (£5,000,000).

97. Such insurance must be maintained for the duration of the Framework Agreement and for a minimum of 5 years following the expiry or termination of the Framework Agreement.

98. The Contractor must give the Authority, on request, copies of all insurance policies referred to in this clause or a broker's verification of insurance to demonstrate that the appropriate cover is in place, together with receipts or other evidence of payment of the latest premiums due under those policies.

34. Dispute Resolution

99. The Parties must attempt in good faith to resolve any dispute or difference between them arising out of or in connection with the Framework Agreement, including any question regarding its existence, validity or termination, in accordance with the Management Arrangements.

100. Any dispute or difference arising out of or in connection with this Framework Agreement, including any question regarding its existence, validity or termination, which cannot be resolved in accordance with the Management Arrangements, shall be determined by the appointment of a single arbitrator to be agreed between the Parties, or failing agreement within fourteen days after either Party has given to the other a written request to concur in the appointment of an arbitrator, by an arbitrator to be appointed by the Scottish Arbitration Centre on the written application of either Party. The seat of arbitration shall be Scotland. The language used in the arbitral proceedings shall be English.

101. Any arbitration under clause 100. of the Framework Agreement is subject to the Arbitration (Scotland) Act 2010.

35. Severability

102. If any provision of the Framework Agreement is held invalid, illegal or unenforceable for any reason by any court of competent jurisdiction, such provision is severed and the remainder of the provisions of the Framework Agreement continue in full force and effect as if the Framework Agreement had been executed with the invalid, illegal or unenforceable provision eliminated.

36. Waiver and Cumulative Remedies

103. Any failure of either Party to insist upon strict performance of any provision of the Framework Agreement, or the failure of either Party to exercise, or any delay in exercising, any right or remedy does not constitute a waiver of that right or remedy and does not cause a diminution of the obligations established by the Framework Agreement.

104. Accordingly, no waiver is effective unless it is expressly stated to be a waiver and communicated to the other Party in writing in accordance with clause 28. .

105. The rights and remedies provided by this Framework Agreement are cumulative and may be exercised concurrently or separately, and the exercise of any one remedy shall not be deemed an election of such remedy to the exclusion of other remedies.

37. Force Majeure

106. Neither Party is liable to the other Party for any delay in performing, or other failure to perform, its obligations under the Framework Agreement to the extent that such delay or failure is a result of Force Majeure. Nonetheless, each Party must use all reasonable endeavours to continue to perform its obligations under the Framework Agreement for the duration of such Force Majeure. However, if Force Majeure prevents either Party from performing its material obligations under the Framework Agreement for a period in excess of six months, either Party may terminate the Framework Agreement with immediate effect by notice.

107. Any delay or other failure by the Contractor in performing its obligations under the Framework Agreement which results from any failure or delay by a Contractor Staff is only to be regarded as due to Force Majeure if that Contractor Staff is itself impeded by Force Majeure from complying with an obligation to the Contractor.

108. If either Party becomes aware of Force Majeure which gives rise to, or is likely to give rise to, any delay or failure on its part as described in clause 106. , it must immediately notify the other Party of the Force Majeure and the estimated period for which the failure or delay is to continue.

109. The only events that afford relief from liability for failure or delay under the Framework Agreement are Force Majeure events.

39. Disruption

110. The Contractor shall take reasonable care to ensure that in the performance of its obligations under the Framework Agreement it does not disrupt the operations of the Authority, its employees or any other Contractor employed by the Authority.

111. The Contractor shall immediately inform the Authority of any actual or potential industrial action, whether such action be by their own employees or others, which affects or might affect its ability at any time to perform its obligations under the Framework Agreement.

112. In the event of industrial action by the Staff, the Contractor shall seek approval to its proposals to continue to perform its obligations under the Framework Agreement.

113. If the Contractor's proposals referred to in clause 112. are considered insufficient or unacceptable by the Authority acting reasonably, then the

Authority may by notice terminate the Framework Agreement with immediate effect.

40. Termination Rights

114. The Authority may remedy the Contractor's interest in the Framework Agreement by notice to the Contractor with immediate effect if the Contractor commits a Default and if:

- 114.1.** the Contractor has not remedied the Default to the satisfaction of the Authority within 20 Working Days, or such other period as may be specified by the Authority, after issue of a notice specifying the Default and requesting it to be remedied;
- 114.2.** the Default is not in the opinion of the Authority, capable of remedy;
or
- 114.3.** the Default is a material breach of the Framework Agreement.

115. The Authority may also terminate the Contractor's interest in the Framework Agreement:

- 115.1.** in accordance with any provision of the Schedules; or
- 115.2.** in accordance with any provisions of the Standard Terms of Supply relating to the following activities:
 - 115.2.1.** entering, attending, or occupying the Authority's premises;
 - 115.2.2.** making use of the Authority's property or information technology systems, or giving the Authority the use of the Contractor's property or information technology systems;
 - 115.2.3.** having dealings with the Authority's employees, Contractors, suppliers or contractors;
 - 115.2.4.** soliciting the Authority's employees;
 - 115.2.5.** making representations or giving professional advice to the Authority;
 - 115.2.6.** generating information for or giving information to the Authority;
 - 115.2.7.** receiving information from or holding information on behalf of the Authority; and
 - 115.2.8.** carrying out publicity or marketing activities.
- 115.3.** where a Call-off Contract with the Contractor under this Framework Agreement has been terminated prior to the termination date of that Call-off Contract.
- 115.4.** where, at any time before the term of the Framework Agreement, the Contractor or any person falling within the description set out in

paragraph (2) of regulation 58 of The Public Contracts (Scotland) Regulations 2015 commits or is convicted of an offence referred to in paragraph (1) of that regulation.

116. The Authority may terminate the Framework Agreement if a Call-off Contract is terminated because of a Default by the Contractor.

117. The Authority may terminate the Contract in the event that:

- 117.1.** the Contract has been subject to substantial modification which would have required a new procurement procedure in accordance with regulation 72(9) (modification of contracts during their term) of the Public Contracts (Scotland) Regulations 2015; or
- 117.2.** the Contractor has, at the time of contract award, been in one of the situations referred to in regulation 58(1) (exclusion grounds) of the Public Contracts (Scotland) Regulations 2015, including as a result of the application of regulation 58(2) of those regulations, and should therefore have been excluded from the procurement procedure.

118. The Authority may terminate the Framework Agreement in the event that the auditor ceases to be licenced by a body of accountants established in the UK or another EEA state (as defined in section 21(5) of the 2000 Act and section 97(7) of the 1973 Act) to conduct audit business.

119. The Authority may also terminate the Framework Agreement in the event of a failure by the Contractor to comply in the performance of its obligations under the Framework Agreement with legal obligations in the fields of environmental, social or employment law.

41. Termination on Insolvency and Change of Control

120. The Authority may terminate the Contractor's interest in the Framework Agreement with immediate effect by notice where in respect of the Contractor:

- 120.1.** a proposal is made for a voluntary arrangement within Part I of the Insolvency Act 1986 or of any other composition scheme or arrangement with, or assignation for the benefit of, its creditors;
- 120.2.** a shareholders' meeting is convened for the purpose of considering a resolution that it be wound up or a resolution for its winding-up is passed (other than as part of, and exclusively for the purpose of, a bona fide reconstruction or amalgamation);
- 120.3.** a petition is presented for its winding up (which is not dismissed within 14 days of its service) or an application is made for the appointment of a provisional liquidator or a creditors' meeting is convened pursuant to section 98 of the Insolvency Act 1986;
- 120.4.** a receiver, administrative receiver or similar officer is appointed over the whole or any part of its business or assets;
- 120.5.** an application order is made either for the appointment of an administrator or for an administration order, an administrator is appointed, or notice of intention to appoint an administrator is given;

120.6. it is or becomes insolvent within the meaning of section 123 of the Insolvency Act 1986;

120.7. being a “small company” within the meaning of section 382 of the Companies Act 2006, a moratorium comes into force pursuant to schedule A1 to the Insolvency Act 1986;

120.8. a debt relief order is entered into; or

120.9. any event similar to those listed above occurs under the law of any other jurisdiction.

121. The Authority may terminate the Contractor’s interest in the Framework Agreement by notice with immediate effect within 6 months of:

121.1. being notified that a change of Control has occurred in accordance with clause 71. (Assignment and Change of Control); or

121.2. where no such notification has been given, the date that the Authority becomes aware of the change of control.

122. But the Authority may not terminate the Contractor’s interest in the Framework Agreement under clause 121. where approval of the change of control has been granted by notice by the Authority.

42. Exit Management

123. The Contractor shall perform its relevant Exit Management obligations as part of the Framework whether applicable on either the expiry or early termination of this Agreement.

124. The Contractor agrees that if it breaches (or attempts or threatens to breach) its obligation to provide Exit Management, the Authority and their respective customers and stakeholders shall be irreparably harmed. In such circumstance, the Contractor agrees that the Authority may proceed directly to court notwithstanding anything to the contrary in the dispute resolution procedure outlined in Clauses 99. to 101. (Dispute Resolution). If a court of competent jurisdiction finds that the Contractor has breached (or attempted or threatened to breach) any such obligation, the Contractor agrees that without any additional findings of irreparable injury, or other conditions to interdict, the Contractor shall not oppose the entry of an appropriate order compelling performance by the Contractor and restraining the Contractor from any further breaches or attempted or threatened breaches of its obligations in relation to Exit Management.

125. A draft of the Exit Plan shall be produced by the Contractor and supplied to the Authority within three (3) months after the Commencement Date and shall include or address the matters specified in Clause 126. . The Authority shall provide to the Contractor the Authority’s comments on the plan within one (1) month of the Authority’s receipt of the plan. The Contractor shall take into account the comments and suggestions of the Authority and shall issue the final version of the Exit Plan to the Authority within ten (10) Working Days of receipt of the Authority’s comments.

126. The Contractor shall throughout the period of the Agreement review, maintain and continuously update the Exit Plan which shall include:

- 126.1.** the activities required to enable the Authority to re-tender the Authority Requirements and/or the provision of the Services;
- 126.2.** the activities necessary to support any Replacement Contractor or the Authority in carrying out any necessary due diligence relating to all or part of the Services;
- 126.3.** details of the Exit Management to be provided by the Contractor prior to the Exit Management Date;
- 126.4.** support for the Replacement Contractor or the Authority during their preparation of any relevant plan for the transition of the System to the Replacement Contractor or Authority, including prior to and during such transition period;
- 126.5.** the maintenance of a 'business as usual' environment for the Authority during the period when Exit Management obligations are applicable; and
- 126.6.** all other necessary activities to support the preparation for, and execution of, a smooth and orderly Exit Management and transfer of all or part of the Services to either a Replacement Contractor or the Authority.

127. No amendment of the Exit Plan shall be made without prior written consent of the Authority.

43. Compliance with the Law and Changes in the Law

128. The Contractor shall, in complying with all obligations incumbent upon it in terms of the Framework Agreement or any other contract with the Authority, comply in all respects with, and shall ensure that the Contractor's agents, employees and representatives whomsoever comply with the Law.

129. Without prejudice to the generality of clause 128. above (general compliance with the Law provision), the Contractor must not unlawfully discriminate against any person in terms of the Equality Act 2010 in its activities relating to the Framework Agreement or any other contract with the Authority.

130. The Contractor shall take all reasonable steps to ensure the observance of the provisions of clause 128. above by all of their servants, employees, agents, consultants, and sub-contractors.

131. If the cost to the Contractor of the performance of its obligations under the Framework Agreement shall be increased or reduced by reason of the making after the date of the Framework Agreement of any relevant Law that shall be applicable to the Framework Agreement the amount of such increase shall be borne by the Contractor.

44. Offences

132. The Contractor must not commit or attempt to commit any offence:

- under the Bribery Act 2010;
- of fraud, uttering, or embezzlement at common law; or
- of any other kind referred to in regulation 58(1) of the Public Contracts (Scotland) Regulations 2015.

133. Breach of clause 132. is a material breach for the purposes of clause 114. (Termination Rights).

45. Compliance with Anti-Slavery and Human Trafficking Laws

134. In performing its obligations under this Framework Agreement, the Contractor shall:

- 134.1.** comply with all applicable anti-slavery and human trafficking laws, statutes, regulations, and codes from time to time in force, including the Modern Slavery Act 2015 and the Human Trafficking and Exploitation (Scotland) Act 2015;
- 134.2.** not engage in any activity, practice, or conduct that would constitute an offence under the Human Trafficking and Exploitation (Scotland) Act 2015 if such activity, practice, or conduct were carried out in the UK;
- 134.3.** include in contracts with its direct subcontractors and contractors' provisions which are at least as onerous as those set out in this clause;
- 134.4.** to the extent permitted by law or regulation notify the Authority as soon as it becomes aware of any actual or suspected slavery or human trafficking in a supply chain which has a connection with this Agreement;
- 134.5.** to the extent reasonably practicable maintain a complete set of records to trace the supply chain of all Goods and Services provided to the Authority;
- 134.6.** provide the Authority and its third-party representatives reasonable access to such records.

135. The Contractor represents and warrants that it has not been convicted of any offence involving slavery and human trafficking nor has it been the subject of any investigation, inquiry or enforcement proceedings regarding any offence or alleged offence of or in connection with slavery and human trafficking.

136. The Contractor shall, if its turnover exceeds the amount prescribed by regulations made by the Secretary of State under s54(2)(b) and (3) of the Modern Slavery Act 2015, prepare and deliver to the Authority, each year, an annual slavery and human trafficking report setting out the steps it has taken to ensure that slavery and human trafficking is not taking place in any of its supply chains or in any part of its business.

137. The Authority may terminate this Agreement with immediate effect by giving written notice to the Contractor if the Contractor commits a breach of this clause.

46. Tax Arrangements

138. Where the Contractor is liable to be taxed in the UK in respect of consideration received under this contract, it shall at all times comply with the Income Tax (Earnings and Pensions) Act 2003 (ITEPA) and all other statutes and regulations relating to income tax in respect of that consideration.

139. Where the Contractor is liable to National Insurance Contributions (NICs) in respect of consideration received under this Framework Agreement, it shall at all times comply with the Social Security Contributions and Benefits Act 1992 (SSCBA) and all other statutes and regulations relating to NICs in respect of that consideration.

140. The Authority may, at any time during the term of this Framework Agreement, request the Contractor to provide information which demonstrates how the Contractor complies with clauses 138. and 139. above or why those clauses do not apply to it.

141. A request under clause 140. above may specify the information which the Contractor must provide and the period within which that information must be provided.

142. The Authority may supply any information which it receives under clause 140. to the Commissioners of Her Majesty's Revenue and Customs for the purpose of the collection and management of revenue for which they are responsible.

143. The Contractor shall take all reasonable steps to ensure the observance of the provisions of these clauses 138. to 144. by all of their servants, employees, agents, consultants, and sub-contractors.

144. Where the Contractor enters into any sub-contract with any of its servants, employees, agents, consultants and/or sub-contractors, the Contractor must ensure that a provision is included which is in the same terms as these clauses 138. to 144. subject only to modification to refer to the correct designation of the equivalent party as the Contractor.

47. Blacklisting

145. The Contractor must not commit any breach of the Employment Relations Act 1999 (Blacklists) Regulations 2010 or section 137 of the Trade Union and Labour Relations (Consolidation) Act 1992, or commit any breach of the Data Protection Laws by unlawfully processing personal data in connection with any blacklisting activities. Breach of this clause is a material default which shall entitle the Authority to terminate the Framework Agreement.

48. Conflicts of interest

146. The Contractor must take appropriate steps to ensure that the Authority is not placed in a position where, in the reasonable opinion of the Authority, there

is an actual or potential conflict between the interests of the Contractor and the duties owed to the Authority under the Framework Agreement.

147. The Contractor must disclose by notice to the Authority full particulars of any actual or potential conflict of interest which may arise and must take such steps as are necessary to avoid or remove the conflict of interest.

148. Breach of this clause by the Contractor is a material breach for the purposes of clause 114. (Termination Rights).

49. Consequences of Expiry or Termination

149. Where the Authority terminates the Contractor's interest in the Framework Agreement under clause 114. (Termination Rights) and makes other arrangements for the supply of Services, the Contractor indemnifies the Authority against all costs incurred in making those arrangements.

150. The termination of this Framework Agreement in accordance with clause 114. (Termination Rights) and/or clause 120. (Termination on Insolvency and Change of Control) or its expiry shall not affect the accrued rights of either party.

151. Following the service of a termination notice, the Contractor shall continue to perform its obligations in accordance with the provisions of this Framework Agreement until termination.

152. The following provisions survive the expiry or termination of this Framework Agreement:

- 152.1.** clauses 1. to 2. (Definitions and Interpretation);
- 152.2.** clauses 18. to 21. (Award Procedures);
- 152.3.** clause 26. (Official Secrets Acts);
- 152.4.** clause 32. (Recovery of Sums Due);
- 152.5.** clauses 33. to 37. (Data Protection);
- 152.6.** clauses 38. to 44. (Transparency and Freedom of Information);
- 152.7.** clauses 45. to 48. (Authority Protected Information);
- 152.8.** clauses 49. to 52. (Contractor Sensitive Information);
- 152.9.** clauses 53. to 54. (Audit);
- 152.10.** clause 55. (Publicity);
- 152.11.** clauses 60. to 61. (Offers of Employment);
- 152.12.** clause 65. (Parties pre-existing Intellectual Property Rights);
- 152.13.** Clauses 66. to 69. (Claims relating to Intellectual Property Rights);
- 152.14.** clause 83. (Warranties and Representations);

- 152.15. clause 84. (Indemnity);
- 152.16. clause 99. to 101. (Dispute Resolution Procedure);
- 152.17. clause 103. to 105. (Waiver and Cumulative Remedies);
- 152.18. clauses 138. to 144. (Tax arrangements);
- 152.19. these clauses 149. to 154. (Consequences of Termination); and
- 152.20. clause 157. (Governing Law and Jurisdiction).

153. Immediately upon termination of the Framework Agreement for any reason whatsoever the Contractor shall render such reasonable assistance to the Authority or third party nominated by the Authority, if requested, as may be necessary to effect an orderly assumption by a Replacement Contractor of the Services previously performed by the Contractor under the Framework Agreement. The Contractor shall be entitled to charge for such termination services in accordance with the grade related rates agreed at schedule 2 only for services in excess of those set out in the Exit Plan and required under International Standards of Auditing (UK).

154. On expiry or termination of the Framework Agreement the Contractor must:

- 154.1. immediately return to the Authority all Authority Property and Authority Protected Information in its possession; and
- 154.2. destroy or delete any copies of Authority Protected Information (whether physical or electronic) in its possession that is not required to be retained as part of an audit file.

50. Entire Agreement

155. This Framework Agreement constitutes the entire agreement between the Parties in respect of the matters dealt with herein. This Framework Agreement supersedes all prior negotiations between the Parties and all representations and undertakings made by one Party to the other, whether written or oral, except that this clause does not exclude liability in respect of any misrepresentation (whether in the SPD or Tender or otherwise).

156. In the event of, and only to the extent of, any conflict between the clauses of this Framework Agreement, the Schedules and any document referred to in this Framework Agreement, the following order of precedence applies:

- the clauses of this Framework Agreement;
- the Standard Terms of Supply;
- the other Schedules; and
- any other document referred to in the clauses of this Framework Agreement.

51. Governing Law and Jurisdiction

157. This Framework Agreement is governed by and interpreted in accordance with Scots law and, subject to clauses 99. to 101. (Dispute Resolution), the Parties submit to the exclusive jurisdiction of the Scottish courts.

IN WITNESS WHEREOF these presents typewritten on this and the 39 preceding pages together with the 8 Schedules annexed hereto are executed as follows:

SIGNED for and on behalf of
the Auditor General for
Scotland and the Accounts
Commission

On

Signature

Full Name XXX

Position XXX

Address 102 West Port
Edinburgh
EH3 9DN

SIGNED for and on behalf of
XXX

On

Signature

Full Name

Position

Address XXX
XXX
XXX

Schedule 1

Specification and Service levels

This and the following 9 pages comprise Schedule 1 to the Framework Agreement between the Authority and XXX.

Purpose

1. The Auditor General for Scotland and the Accounts Commission are required to appoint the external auditors of a wide range of public sector bodies under the terms of the Public Finance and Accountability (Scotland) Act 2000 and the Local Government (Scotland) Act 1973.
2. Both the Auditor General and the Accounts Commission intend to appoint Audit Scotland staff to approximately two-thirds of public bodies (by audit fee) within their remits. The Auditor General and the Accounts Commission will appoint accountancy firms to audit the remaining third.
3. The audit work relates to the financial years 2022/23 to 2026/27, with the option to extend by up to two years.
4. Audits are to be carried out in accordance with auditors' responsibilities under the Public Finance and Accountability (Scotland) Act 2000 or the Local Government (Scotland) Act 1973 as appropriate, and in accordance with the Code of audit practice published by the Auditor General and Accounts Commission.

Background to the Auditor General, the Accounts Commission and Audit Scotland

5. The Auditor General is an independent Crown appointment, made on the recommendation of the Scottish Parliament under the Scotland Act 1998. The Auditor General is independent and not subject to the control of any member of the Scottish Government or the Parliament.
6. The Auditor General is responsible under the Public Finance and Accountability (Scotland) Act 2000 for appointing independent auditors to audit the accounts of most public bodies in Scotland, except for the local government sector, and for reporting on their financial health and performance.
7. The Accounts Commission is an independent public body. Its members are appointed by Scottish ministers to hold local government to account. The Accounts Commission was established under the Local Government (Scotland) Act 1973.
8. The Accounts Commission is responsible for securing the external audit of local government bodies' accounts and the audit of Best Value and community planning.

9. Audit Scotland is a statutory body established under the Public Finance and Accountability (Scotland) Act 2000. It is Scotland's national public sector audit agency which provides the Auditor General and the Accounts Commission with the services they need to carry out their duties.

10. Audit Scotland supports the Auditor General and the Accounts Commission in the independent appointment of auditors and undertakes two-thirds of the annual financial audits of public bodies across Scotland's public sector.

Background to requirement

11. The Auditor General and the Accounts Commission rotate auditors every five years (with an option to extend by up to two further years) in line with the principles of the Ethical Standard to minimise risks to auditor independence and test the market for audit.

12. The five-year period covering the audits of financial years 2016/17 – 2020/21 was extended by one year due to the significant disruption caused by the Covid-19 pandemic to public bodies and to auditors of the public sector.

13. At the core of public audit is the annual audit of accounts, which is based on an examination of reported financial transactions, in accordance with relevant legislation, the applicable accounting framework and other reporting requirements.

14. Recognising that public money is involved, the Auditor General and the Accounts Commission require the scope of public audit to be wider than the private sector audit requirements. The Code requires conclusions on aspects of public bodies' arrangements and performance, for example, conclusions relating to financial sustainability and governance.

15. Local Government auditors have a statutory duty to consider whether the local government body has made proper arrangements for Best Value and community planning. The Accounts Commission requires the wider-scope work to reflect that responsibility as set out in the Code.

16. The Code is designed to ensure that public audit adds value by providing independent conclusions which help the public assess whether public bodies use their resources in the public interest.

17. To add value through audit work, auditors must demonstrate that they understand the environment in which public bodies operate and the national outcome priorities that the bodies contribute to. Audit work must be tailored to the circumstances of the audited body and the audit risks identified and be proportionate.

18. The Auditor General and the Accounts Commission are committed to making a positive contribution to national outcome priorities such as the recovery from the Covid-19 pandemic, tackling inequalities and climate change. Auditors will be asked to contribute to work scrutinising how public bodies are responding to these challenges. Requirements will be detailed in supplementary guidance to the Code and in Annual Planning Guidance.

Definitions

19. In these Specifications and service level, the following words shall have the following meanings:

- 19.1.** The “**annual audit**” comprises the audit of the financial statements and other reports within the annual accounts and the wider-scope audit responsibilities.
- 19.2.** “**Audited body**” means the body to which the Contractor has been appointed.
- 19.3.** “**Authority**” means the Auditor General for Scotland and Accounts Commission, acting through Audit Scotland.
- 19.4.** “**Code of audit practice**” (the Code) means the Code published by the Auditor General and the Accounts Commission that sets out the expectations and requirements for public sector audits carried out under appointment.
- 19.5.** “**Contractor**” means XXX.
- 19.6.** “**Portfolio**” means the group of audited bodies to which a Contractor has been appointed.
- 19.7.** “**Staff**” means all partners, members, employees, agents, consultants and individual contractors of the Contractor, and Affiliate of the Contractor and/or of any sub-contractor.
- 19.8.** “**Statutory report**” means a report prepared by the Auditor General under s22 of the Public Finance and Accountability (Scotland) Act 2000 or by the Controller of Audit under Section 102 of the Local Government (Scotland) Act 1973.
- 19.9.** “**Those charged with governance**” means the person(s) or organisation(s) (eg a corporate trustee) with responsibility for overseeing the strategic direction of the entity and obligations related to the accountability of the entity. This includes overseeing the financial reporting process.

The requirement

20. The appointments are for the audit of Scottish public sector bodies for the financial years 2022/23 to 2026/27 inclusive, and, unless the Auditor General and/or the Accounts Commission at their absolute discretion decide to extend the audit appointment to one or more of the bodies for up to two further years, will terminate automatically upon completion thereof.

21. Public bodies to be audited under the Auditor General and the Accounts Commission include, as at 2020/21:

- 76 central government bodies (including the Scottish Police Authority, Scottish Fire and Rescue Service, and Scottish Water) and the Scottish Parliament

- 23 NHS bodies
- 32 councils
- 72 joint boards and committees (including 30 health integration boards)
- 21 further education colleges.

22. The Portfolio of audit appointments that will be offered to Contractors will not be finally determined until after successful bidders have been selected. This allows the Authority to consider the most appropriate Portfolios based on the rotation principles and portfolio principles set out in Schedule 3, paragraphs 7 to 12. These include ensuring the rotation of auditors, the need to avoid conflicts of interest, and the grouping of audits on a geographical or business function basis.

23. Contractors undertake the audit of accounts including the wider-scope responsibilities and, where appropriate, Best Value. Once appointed, Contractors act independently in carrying out their responsibilities and in exercising professional judgement. The Contractor reports to the Audited body and others on the results of audit work.

24. While Contractors are appointed by the Auditor General or the Accounts Commission, and act independently in forming their opinions on the financial statements of the bodies that they audit, auditors are expected to work closely with Audit Scotland and with each other to provide an efficient and effective audit regime across the public sector. In particular the Contractors engaged in each sector are expected to share intelligence to engender a consistent approach to the risks facing the sector.

25. Contractors are required to undertake the following work under this Framework:

25.1. The annual audit which comprises the audit of the financial statements and other reports within the annual accounts and the wider-scope audit responsibilities. This may include supporting the Authority in preparing and presenting statutory reports.

25.2. Other outputs for specific bodies:

25.2.1. Certification of Housing Benefit Subsidy and Non-Domestic Rate Income for councils

25.2.2. Assurance statements for whole of government account returns or other consolidation schedules for bodies meeting the specified thresholds

25.2.3. Auditors report on summary financial statements where these are prepared.

26. Contractors are required to carry all work procured under this Framework in accordance with:

26.1. the auditor's statutory responsibilities, including those laid down in Part VII of the Local Government in Scotland Act 1973 as amended (The 1973 Act) (for local authority bodies) and Part 2 of the Public

Finance and Accountability (Scotland) Act 2000 (the 2000 Act) (for other bodies);

26.2. the Code of audit practice;

26.3. International Standards on Auditing (UK) (the ISAs) including applicable quality control standards from the date they become effective (auditors may choose to adopt early where permitted by the FRC);

26.4. The Ethical Standard;

26.5. guidance on the application of the ISAs to public audit provided in the Public Audit Forum's Practice Note 10 Audit of Financial Statements and Regularity of Public Sector Bodies in the United Kingdom;

26.6. the Financial Reporting Standard's Ethical Standard;

26.7. guidance from the Authority which supplements the Code and explicitly states that compliance is required. This comprises guidance on planning annual audits and guidance on the Independent Auditors Reports; and

26.8. commitments made in the Tender submitted by the Contractor.

27. The Authority may terminate the appointment of the Contractor to the audited body at any time, if the Contractor fails to perform audit work to an adequate standard which is acceptable to the Authority.

28. Auditors are required to pay due regard, ie 'apply or explain,' to:

28.1. applicable practice notes and bulletins issued by the Financial Reporting Council (or successor body); and

28.2. guidance from the Authority which supplements the Code and assists auditors in performing their responsibilities and explicitly states that auditors should pay due regard to it. This includes guidance to inform audit judgements, and on the application of wider-scope and Best Value audit.

29. All guidance referred to in clause 26. is periodically updated. The Authority will notify Contractors of all changes to guidance that apply to their work. Schedule 4 explains how any changes to costs arising from new standards are managed.

Key milestones

30. Key milestones are completion of the independent auditor's reports and annual audit reports. The Authority will measure delivery against the dates specified in the annual guidance on planning the audit as part of its assessment of quality.

The Authority's responsibilities

31. The Authority will:

- 31.1.** Publish annual guidance on planning the audit and other guidance that supplements the Code.
- 31.2.** Set and communicate expected remuneration annually.
- 31.3.** Pay appointed auditors 95 per cent of the expected remuneration for each audit in equal instalments throughout the currency of the audit.
- 31.4.** Pay appointed auditors the balance of remuneration within thirty (30) days of receipt by the Authority of a final fee claim for sums properly due.
- 31.5.** Publish the following audit outputs on Audit Scotland's website:
 - 31.5.1.** Annual Audit Plan
 - 31.5.2.** management/interim reports
 - 31.5.3.** Annual Audit Report
 - 31.5.4.** Any other reports that are specified in the Annual Audit Plan (or have been completed as a result of an issue or risk identified after the plan has been agreed), except the Independent Auditor's Report and reports on grant claims and Whole of Government Accounts etc.

Reporting

- 32.** Contractors report audit outputs to different stakeholders depending on the output:
 - 32.1.** Annual Audit Plans are addressed to those charged with governance of the Audited body and copied to the Authority.
 - 32.2.** Management/interim reports are addressed to either management or those charged with governance of the Audited body and copied to the Authority.
 - 32.3.** The independent auditor's report from an audit appointed by the Auditor General is addressed to the Audited body, the Auditor General and the Scottish Parliament. It is provided to the Audited body for inclusion with the financial statements which are copied to the Authority.
 - 32.4.** The independent auditor's report from an audit appointed by the Accounts Commission is addressed to the Audited body and the Accounts Commission. It is provided to the Audited body for inclusion with the financial statements which are copied to the Authority.
 - 32.5.** The Annual Audit Report from an audit appointed by the Auditor General is addressed to the Audited body and the Auditor General and copied to the Authority.

32.6. The Annual Audit Report from an audit appointed by the Accounts Commission is addressed to the Audited body and the Controller of Audit and copied to the Authority.

32.7. Other outputs are addressed as specified in supplementary guidance.

Continuous improvement

33. Contractors will be expected to continually improve the way in which the audit work is to be delivered throughout the Contract duration.

34. Contractors should present new ways of working to the Authority during six-monthly Contract review meetings.

35. Material changes to the way in which audit is to be delivered must be brought to the Authority's attention and agreed prior to any changes being implemented.

Sustainability

36. Contractors should aim to support the Authority's sustainability objectives as set out in its Environmental and sustainability Policy. Potential Providers will be required to describe how they will deliver the contract in a way that ensures that it supports those objectives as part of the tender.

Fair work

37. Public bodies in Scotland are committed to applying the Fair Work First criteria in their own organisation and in publicly funded supply chains. Fair Work First is the Scottish Government's policy for driving good quality and fair work in Scotland.

38. Contractors are asked to describe how they are committed to progressing towards adopting and how they intend to continue embedding the five Fair Work First criteria:

- appropriate channels for effective voice, such as trade union recognition;
- investment in workforce development;
- no inappropriate use of zero hours contracts;
- action to tackle the gender pay gap and create a more diverse and inclusive workplace; and,
- providing fair pay for workers (for example, payment of the real Living Wage).

39. In order to ensure the highest standards of service quality in this contract we expect Contractors to commit to progressing towards adopting the five Fair Work First criteria in the delivery of this contract as part of a fair and equitable employment and reward package as a route to progressing towards wider fair work practices set out in the Fair Work Framework.

Accreditation

40. It is a legal requirement of the Public Finance and Accountability Act 2000 and the Local Government (Scotland) Act 1973 that auditors are either:

- 40.1.** eligible for appointment as a statutory auditor under Part 42 of the Companies Act 2006 or
- 40.2.** a member of a body of accountants established in the United Kingdom or another EEA State.

41. Any potential provider that is unable to confirm their status will not be considered for the Framework.

Staff and customer service

42. Potential Provider's staff assigned to the Contract shall have, or be in training for, CCAB or equivalent or specialist qualifications relevant to audit and experience to deliver the Contract.

43. So far as practicable, Contractors shall ensure continuity of the staff deployed on the audit and avoid the deployment of an excessive number of staff.

Service levels and performance

44. The Authority will measure the quality of auditors' delivery by:

KPI	Service Area	KPI description	Target
1	Independence	Value of non-audit services carried out during the audit year.	Steady or declining value
2	Independence	Percentage of audit providers confirming compliance with ethical guidance.	100%
3	Personnel	Staff survey results on: a) I am encouraged to carry out a high quality audit b) The time and resources available to me enables the delivery of a high quality audit c) The training and development I receive enables a high quality audit.	Steady or increasing
4	Personnel	Percentage of audit staff with appropriate qualifications and in training. <i>(appropriate qualifications means CCAB or equivalent or specialist qualification relevant to audit)</i>	100%
5	Personnel	Number of training and development days delivered per member of staff.	Steady or increasing

6	Delivery	Percentage of audits completed on time.	95%
7	Quality	Percentage of cold reviews showing good compliance with auditing standards. [good compliance means no more than limited improvements required]	80% Cumulative over 3 years
8	Quality	Percentage of audits with material prior period adjustments due to error.	Less than 10%
9	Quality	Number of complaints on audit quality upheld.	0
10	Stakeholder Perception	a) Perception of the usefulness of the audit overall b) Perception of the appropriateness of coverage of i. Governance and accountability ii. Financial management iii. Financial sustainability iv. Value for money v. Best Value (LG only).	4/5

45. The Authority periodically reviews the audit quality KPIs to remain up to date with developments in audit. The Authority will consult with auditors when updating KPIs.

46. Performance of auditors is reported on Audit Scotland's website in the Quality of Public Audit in Scotland annual report. More detail is provided to the Auditor General and the Accounts Commission as the commissioners of audit.

Security requirements

47. All staff involved in audit work under this Framework must obtain a Standard disclosure from Disclosure Scotland at their own cost. Certain Audited bodies may require enhanced disclosure which auditors should accommodate as part of the audit.

48. Any requirements for disclosures do not override the statutory rights of access to documents provided to auditors through the Public Finance and Accountability (Scotland) Act 2000 and the Local Government (Scotland) Act 1973.

Payment

49. Payment details are explained in Schedule 4 Management arrangements:

- The Contractor may submit a single initial claim for 95% of the expected remuneration which will be paid by Audit Scotland in equal instalments throughout the currency of the audit.

- The Contractor must submit a final fee claim consisting of the balance of the agreed remuneration and the auditor's travel and subsistence expenses on completion of the audit and submission of a final progress report.

Base location

50. Contractors may need to undertake a proportion of their work at the premises of the Audited body. Audited bodies are based across Scotland.

51. The office locations from which you will service this Framework are:

- **XXX**
XXX
XXX
- **XXX**
XXX
XXX

Schedule 2

Pricing schedule

This and the following 10 pages comprise Schedule 2 to the Framework Agreement between the Authority and XXX.

Pricing Schedule

Body	Sector	Lot	Auditor Remuneration 2022/23 bid excluding VAT	VAT at 20%	Auditor Remuneration 2022/23 bid including VAT
Accountant in Bankruptcy	CG	Lot 1	XXX	XXX	XXX
Architecture and Design Scotland	CG	Lot 1	XXX	XXX	XXX
Bord na Gaidhlig	CG	Lot 1	XXX	XXX	XXX
Cairngorms National Park Authority	CG	Lot 1	XXX	XXX	XXX
Care Inspectorate	CG	Lot 1	XXX	XXX	XXX
Children and Young People's Commissioner Scotland	CG	Lot 1	XXX	XXX	XXX
Children's Hearings Scotland	CG	Lot 1	XXX	XXX	XXX
Commissioner for Ethical Standards in Public Life in Scotland	CG	Lot 1	XXX	XXX	XXX
Community Justice Scotland	CG	Lot 1	XXX	XXX	XXX
Creative Scotland	CG	Lot 1	XXX	XXX	XXX
Creative Scotland Lottery Fund	CG	Lot 1	XXX	XXX	XXX
Crofting Commission	CG	Lot 1	XXX	XXX	XXX
Crown Estate Scotland	CG	Lot 1	XXX	XXX	XXX

Crown Office and Procurator Fiscal Service	CG	Lot 1	XXX	XXX	XXX
Disclosure Scotland	CG	Lot 1	XXX	XXX	XXX
Education Scotland	CG	Lot 1	XXX	XXX	XXX
Food Standards Scotland	CG	Lot 1	XXX	XXX	XXX
Forestry and Land Scotland	CG	Lot 1	XXX	XXX	XXX
Highlands and Islands Enterprise	CG	Lot 1	XXX	XXX	XXX
Historic Environment Scotland	CG	Lot 1	XXX	XXX	XXX
Independent Living Fund Scotland	CG	Lot 1	XXX	XXX	XXX
Loch Lomond and the Trossachs NPA	CG	Lot 1	XXX	XXX	XXX
National Galleries of Scotland	CG	Lot 1	XXX	XXX	XXX
National Library of Scotland	CG	Lot 1	XXX	XXX	XXX
National Museums of Scotland	CG	Lot 1	XXX	XXX	XXX
National Records of Scotland	CG	Lot 1	XXX	XXX	XXX
NHS Superannuation Scheme (Scotland)	CG	Lot 1	XXX	XXX	XXX
Office of the Scottish Charity Regulator	CG	Lot 1	XXX	XXX	XXX
Police Investigations and Review Commissioner	CG	Lot 1	XXX	XXX	XXX
QLTR	CG	Lot 1	XXX	XXX	XXX
Quality Meat Scotland	CG	Lot 1	XXX	XXX	XXX
Registers of Scotland	CG	Lot 1	XXX	XXX	XXX
Revenue Scotland Resource Accounts and the Devolved Taxes Account	CG	Lot 1	XXX	XXX	XXX
Risk Management Authority	CG	Lot 1	XXX	XXX	XXX

Royal Botanic Garden Edinburgh	CG	Lot 1	XXX	XXX	XXX
Scottish Canals	CG	Lot 1	XXX	XXX	XXX
Scottish Children's Reporter Administration	CG	Lot 1	XXX	XXX	XXX
Scottish Commission on Social Security	CG	Lot 1	XXX	XXX	XXX
Scottish Courts and Tribunals Service	CG	Lot 1	XXX	XXX	XXX
Scottish Criminal Cases Review Commission	CG	Lot 1	XXX	XXX	XXX
Scottish Enterprise	CG	Lot 1	XXX	XXX	XXX
Scottish Environment Protection Agency	CG	Lot 1	XXX	XXX	XXX
Scottish Fire and Rescue Service	CG	Lot 1	XXX	XXX	XXX
Scottish Fiscal Commission	CG	Lot 1	XXX	XXX	XXX
Scottish Forestry	CG	Lot 1	XXX	XXX	XXX
Scottish Funding Council	CG	Lot 1	XXX	XXX	XXX
Scottish Housing Regulator	CG	Lot 1	XXX	XXX	XXX
Scottish Human Rights Commission	CG	Lot 1	XXX	XXX	XXX
Scottish Information Commissioner	CG	Lot 1	XXX	XXX	XXX
Scottish Land Commission	CG	Lot 1	XXX	XXX	XXX
Scottish Legal Aid Board	CG	Lot 1	XXX	XXX	XXX
Scottish Legal Complaints Commission	CG	Lot 1	XXX	XXX	XXX
Scottish Natural Heritage	CG	Lot 1	XXX	XXX	XXX
Scottish Police Authority	CG	Lot 1	XXX	XXX	XXX
Scottish Prison Service	CG	Lot 1	XXX	XXX	XXX
Scottish Public Pensions Agency	CG	Lot 1	XXX	XXX	XXX

Scottish Public Services Ombudsman	CG	Lot 1	XXX	XXX	XXX
Scottish Qualifications Authority	CG	Lot 1	XXX	XXX	XXX
Scottish Road Works Commissioner	CG	Lot 1	XXX	XXX	XXX
Scottish Social Services Council	CG	Lot 1	XXX	XXX	XXX
Scottish Teachers' Superannuation Scheme	CG	Lot 1	XXX	XXX	XXX
Skills Development Scotland	CG	Lot 1	XXX	XXX	XXX
Social Security Scotland	CG	Lot 1	XXX	XXX	XXX
Sportscotland	CG	Lot 1	XXX	XXX	XXX
Sportscotland Lottery Fund	CG	Lot 1	XXX	XXX	XXX
Standards Commission for Scotland	CG	Lot 1	XXX	XXX	XXX
Student Awards Agency for Scotland	CG	Lot 1	XXX	XXX	XXX
Transport Scotland	CG	Lot 1	XXX	XXX	XXX
VisitScotland	CG	Lot 1	XXX	XXX	XXX
Water Industry Commission for Scotland	CG	Lot 1	XXX	XXX	XXX
Ayrshire College	FE	Lot 1	XXX	XXX	XXX
Borders College	FE	Lot 1	XXX	XXX	XXX
City of Glasgow College	FE	Lot 1	XXX	XXX	XXX
Dumfries and Galloway College	FE	Lot 1	XXX	XXX	XXX
Dundee and Angus College	FE	Lot 1	XXX	XXX	XXX
Edinburgh College	FE	Lot 1	XXX	XXX	XXX
Fife College	FE	Lot 1	XXX	XXX	XXX
Forth Valley College	FE	Lot 1	XXX	XXX	XXX

Glasgow Clyde College	FE	Lot 1	XXX	XXX	XXX
Glasgow Kelvin College	FE	Lot 1	XXX	XXX	XXX
Glasgow Regional Board	FE	Lot 1	XXX	XXX	XXX
Inverness College	FE	Lot 1	XXX	XXX	XXX
Lews Castle College	FE	Lot 1	XXX	XXX	XXX
Moray College	FE	Lot 1	XXX	XXX	XXX
New College Lanarkshire	FE	Lot 1	XXX	XXX	XXX
North East Scotland College	FE	Lot 1	XXX	XXX	XXX
North Highland College	FE	Lot 1	XXX	XXX	XXX
Perth College	FE	Lot 1	XXX	XXX	XXX
South Lanarkshire College	FE	Lot 1	XXX	XXX	XXX
West College Scotland	FE	Lot 1	XXX	XXX	XXX
West Lothian College	FE	Lot 1	XXX	XXX	XXX
Aberdeen City IJB	LG	Lot 1	XXX	XXX	XXX
Aberdeenshire Council	LG	Lot 1	XXX	XXX	XXX
Aberdeenshire IJB	LG	Lot 1	XXX	XXX	XXX
Angus Council	LG	Lot 1	XXX	XXX	XXX
Angus IJB	LG	Lot 1	XXX	XXX	XXX
Argyll and Bute Council	LG	Lot 1	XXX	XXX	XXX
Argyll and Bute IJB	LG	Lot 1	XXX	XXX	XXX
Ayrshire VJB	LG	Lot 1	XXX	XXX	XXX
Central Scotland VJB	LG	Lot 1	XXX	XXX	XXX
City of Edinburgh Council	LG	Lot 1	XXX	XXX	XXX
Clackmannanshire and Stirling IJB	LG	Lot 1	XXX	XXX	XXX
Clackmannanshire Council	LG	Lot 1	XXX	XXX	XXX
Clyde Valley Learning and Development JC	LG	Lot 1	XXX	XXX	XXX
Clydeplan	LG	Lot 1	XXX	XXX	XXX

Comhairle nan Eilean Siar	LG	Lot 1	XXX	XXX	XXX
Dumfries and Galloway Council	LG	Lot 1	XXX	XXX	XXX
Dumfries and Galloway IJB	LG	Lot 1	XXX	XXX	XXX
Dumfries and Galloway Pension Fund	LG	Lot 1	XXX	XXX	XXX
Dunbartonshire and Argyll and Bute VJB	LG	Lot 1	XXX	XXX	XXX
Dundee City Council	LG	Lot 1	XXX	XXX	XXX
Dundee City IJB	LG	Lot 1	XXX	XXX	XXX
East Ayrshire Council	LG	Lot 1	XXX	XXX	XXX
East Ayrshire IJB	LG	Lot 1	XXX	XXX	XXX
East Dunbartonshire Council	LG	Lot 1	XXX	XXX	XXX
East Dunbartonshire IJB	LG	Lot 1	XXX	XXX	XXX
East Lothian Council	LG	Lot 1	XXX	XXX	XXX
East Lothian IJB	LG	Lot 1	XXX	XXX	XXX
East of Scotland European Consortium	LG	Lot 1	XXX	XXX	XXX
East Renfrewshire Council	LG	Lot 1	XXX	XXX	XXX
East Renfrewshire IJB	LG	Lot 1	XXX	XXX	XXX
Edinburgh IJB	LG	Lot 1	XXX	XXX	XXX
Falkirk Council	LG	Lot 1	XXX	XXX	XXX
Falkirk IJB	LG	Lot 1	XXX	XXX	XXX
Falkirk Pension Fund	LG	Lot 1	XXX	XXX	XXX
Fife Council	LG	Lot 1	XXX	XXX	XXX
Fife IJB	LG	Lot 1	XXX	XXX	XXX
Fife Pension Fund	LG	Lot 1	XXX	XXX	XXX
Glasgow City IJB	LG	Lot 1	XXX	XXX	XXX
Glasgow City Region City Deal Cabinet JC	LG	Lot 1	XXX	XXX	XXX

Grampian VJB	LG	Lot 1	XXX	XXX	XXX
Highland and Western Isles VJB	LG	Lot 1	XXX	XXX	XXX
Highland Council	LG	Lot 1	XXX	XXX	XXX
Highland Pension Fund	LG	Lot 1	XXX	XXX	XXX
HITRANS	LG	Lot 1	XXX	XXX	XXX
Inverclyde Council	LG	Lot 1	XXX	XXX	XXX
Inverclyde IJB	LG	Lot 1	XXX	XXX	XXX
Lanarkshire VJB	LG	Lot 1	XXX	XXX	XXX
Lothian Pension Fund	LG	Lot 1	XXX	XXX	XXX
Lothian VJB	LG	Lot 1	XXX	XXX	XXX
Midlothian Council	LG	Lot 1	XXX	XXX	XXX
Midlothian IJB	LG	Lot 1	XXX	XXX	XXX
Moray Council	LG	Lot 1	XXX	XXX	XXX
Moray IJB	LG	Lot 1	XXX	XXX	XXX
Mugdock Country Park JC	LG	Lot 1	XXX	XXX	XXX
NESTRANS	LG	Lot 1	XXX	XXX	XXX
North Ayrshire Council	LG	Lot 1	XXX	XXX	XXX
North Ayrshire IJB	LG	Lot 1	XXX	XXX	XXX
North East Scotland Pension Fund	LG	Lot 1	XXX	XXX	XXX
North Lanarkshire Council	LG	Lot 1	XXX	XXX	XXX
North Lanarkshire IJB	LG	Lot 1	XXX	XXX	XXX
Orkney and Shetland VJB	LG	Lot 1	XXX	XXX	XXX
Orkney IJB	LG	Lot 1	XXX	XXX	XXX
Orkney Islands Council	LG	Lot 1	XXX	XXX	XXX
Orkney Pension Fund	LG	Lot 1	XXX	XXX	XXX
Perth and Kinross Council	LG	Lot 1	XXX	XXX	XXX
Perth and Kinross IJB	LG	Lot 1	XXX	XXX	XXX

Renfrewshire Council	LG	Lot 1	XXX	XXX	XXX
Renfrewshire IJB	LG	Lot 1	XXX	XXX	XXX
Renfrewshire VJB	LG	Lot 1	XXX	XXX	XXX
Scotland Excel	LG	Lot 1	XXX	XXX	XXX
Scottish Borders Council	LG	Lot 1	XXX	XXX	XXX
Scottish Borders IJB	LG	Lot 1	XXX	XXX	XXX
Scottish Borders Pension Fund	LG	Lot 1	XXX	XXX	XXX
SEStran	LG	Lot 1	XXX	XXX	XXX
Shetland IJB	LG	Lot 1	XXX	XXX	XXX
Shetland Islands Council	LG	Lot 1	XXX	XXX	XXX
Shetland Islands Pension Fund	LG	Lot 1	XXX	XXX	XXX
South Ayrshire Council	LG	Lot 1	XXX	XXX	XXX
South Ayrshire IJB	LG	Lot 1	XXX	XXX	XXX
South Lanarkshire Council	LG	Lot 1	XXX	XXX	XXX
South Lanarkshire IJB	LG	Lot 1	XXX	XXX	XXX
Stirling Council	LG	Lot 1	XXX	XXX	XXX
Strathclyde Concessionary Travel Scheme JC	LG	Lot 1	XXX	XXX	XXX
Strathclyde Partnership for Transport	LG	Lot 1	XXX	XXX	XXX
Strathclyde Pension Funds	LG	Lot 1	XXX	XXX	XXX
Swestrans	LG	Lot 1	XXX	XXX	XXX
TACTRAN	LG	Lot 1	XXX	XXX	XXX
Tay Road Bridge JB	LG	Lot 1	XXX	XXX	XXX
Tayside Contracts JC	LG	Lot 1	XXX	XXX	XXX
Tayside Pension Fund	LG	Lot 1	XXX	XXX	XXX
Tayside VJB	LG	Lot 1	XXX	XXX	XXX

West Dunbartonshire Council	LG	Lot 1	XXX	XXX	XXX
West Dunbartonshire IJB	LG	Lot 1	XXX	XXX	XXX
West Lothian Council	LG	Lot 1	XXX	XXX	XXX
West Lothian IJB	LG	Lot 1	XXX	XXX	XXX
West of Scotland Archaeology Service JC	LG	Lot 1	XXX	XXX	XXX
West of Scotland European Forum	LG	Lot 1	XXX	XXX	XXX
Western Isles IJB	LG	Lot 1	XXX	XXX	XXX
ZetTrans	LG	Lot 1	XXX	XXX	XXX
Healthcare Improvement Scotland	NHS	Lot 1	XXX	XXX	XXX
Mental Welfare Commission for Scotland	NHS	Lot 1	XXX	XXX	XXX
National Waiting Times Centre Board	NHS	Lot 1	XXX	XXX	XXX
NHS 24	NHS	Lot 1	XXX	XXX	XXX
NHS Ayrshire and Arran	NHS	Lot 1	XXX	XXX	XXX
NHS Borders	NHS	Lot 1	XXX	XXX	XXX
NHS Dumfries and Galloway	NHS	Lot 1	XXX	XXX	XXX
NHS Education for Scotland	NHS	Lot 1	XXX	XXX	XXX
NHS Fife	NHS	Lot 1	XXX	XXX	XXX
NHS Forth Valley	NHS	Lot 1	XXX	XXX	XXX
NHS Grampian	NHS	Lot 1	XXX	XXX	XXX
NHS Greater Glasgow and Clyde	NHS	Lot 1	XXX	XXX	XXX
NHS Highland	NHS	Lot 1	XXX	XXX	XXX
NHS Lanarkshire	NHS	Lot 1	XXX	XXX	XXX
NHS Lothian	NHS	Lot 1	XXX	XXX	XXX

NHS National Services Scotland	NHS	Lot 1	XXX	XXX	XXX
NHS Orkney	NHS	Lot 1	XXX	XXX	XXX
NHS Shetland	NHS	Lot 1	XXX	XXX	XXX
NHS Tayside	NHS	Lot 1	XXX	XXX	XXX
NHS Western Isles	NHS	Lot 1	XXX	XXX	XXX
Public Health Scotland	NHS	Lot 1	XXX	XXX	XXX
Scottish Ambulance Service	NHS	Lot 1	XXX	XXX	XXX
The State Hospital	NHS	Lot 1	XXX	XXX	XXX
Aberdeen City Council	LG	Lot 2	XXX	XXX	XXX
Glasgow City Council	LG	Lot 2	XXX	XXX	XXX
Scottish Water	CG	Lot 3	XXX	XXX	XXX
Scottish National Investment Bank	CG	Lot 4	XXX	XXX	XXX
Ferguson Marine Port Glasgow	CG	Lot 5	XXX	XXX	XXX
		Lot 1	XXX	XXX	XXX
		Lot 2	XXX	XXX	XXX
		Lot 3	XXX	XXX	XXX
		Lot 4	XXX	XXX	XXX
		Lot 5	XXX	XXX	XXX
		Total	XXX	XXX	XXX

Grade related day rates

Grade	Hourly rates £
Partner/Director	XXX
Senior manager	XXX
Qualified	XXX
Unqualified	XXX

Less complex body discount

Discount to be applied to auditor remuneration when auditing under the less complex body scope: XX%

Schedule 3

Award procedures

This and the following 10 pages comprise Schedule 3 to the Framework Agreement between the Authority and XXX.

Definitions

1. In these Award procedures, the following words shall have the following meanings:

- 1.1. **“Authority”** means the Auditor General for Scotland and Accounts Commission, acting through Audit Scotland.
- 1.2. **“Call-off Contract”** means any contract for the Supply of Services between the Authority and the Contractor entered into in accordance with the Award Procedures and based on the Standard Terms of Supply.
- 1.3. **“Contractor”** means XXX.
- 1.4. **“Portfolio”** means the group of audited bodies to which a Contractor has been appointed.
- 1.5. **“Specialist audit”** means an audit with specific skill and experience requirements over and above those required for Lot 1 audits. The specialist audits and the audits currently associated with them are Public Interest Entities (currently Aberdeen City Council and Glasgow City Council), Regulated water industry (currently Scottish Water), Regulated financial industry (currently Scottish National Investment Bank) and Commercial shipping construction (currently Ferguson Marine Port Glasgow).

Award procedure

2. If the Authority decides to source services through this Framework Agreement, then it will award its Service Requirements in accordance with the procedure in this Framework Schedule 3 (Award Procedures).

3. The Direct Award option is included in this Schedule 3 Award Procedures at clauses 5. to 17. below and can only be used by the Authority at the commencement and set up of this Framework Agreement.

4. The Authority shall award a Call-off Contract in accordance with the Further Competition Procedure set out in clauses 18. to 24. below.

Direct Awards

5. The following Direct Award Procedure is for use by the Authority only and will be used at the commencement of the Framework agreement to make the initial Audit Appointment awards.

6. Following the Award of the Framework Agreement to the Framework Contractors the individual audit portfolios will be constructed in accordance with the principles set out in clauses 8. to 12. of this Framework Schedule 3 (Award Procedures).

Portfolio construction

7. Each successful firm will receive a direct award of a portfolio value of 7.8% +/- 1% of the mean price bid for Lot 1 by successful bidders in the Pricing Schedule (schedule 2) subject to self-declared auditor maximum capacity. This portfolio may include specialist audits if a firm has been successful in those lots. 7.8% of the total mean price bid equates to approximately £1m of auditor revenue (inclusive of VAT) in terms of 2020/21 audit prices.

8. The Authority will construct portfolios based on rotation criteria and portfolio construction criteria.

Rotation criteria

No	Criteria
1	Firms Appointed auditors rotate appointments after each 5-year cycle
2	Council, associated bodies, NHS health board and Integration Joint Boards grouped
3	Central Government grouped by theme
4	Colleges within the same funding group audited by single auditor
5	Each firm to have a portfolio value of 7.8% +/- 1% of Lot 1 listed in the Pricing Schedule (schedule 2) subject to self-declared auditor maximum capacity.
6	Each firm to have a minimum of two councils in appointment portfolio
7	Each firm to have mixed cross-sectoral portfolio
8	Audit Services Group portfolio to match geographical staffing establishment
9	Aim to rotate audits to firms where an Audit Services Group appointed auditor has audited the body for 2 or more cycles

9. Criteria 1-7 will be given priority over criteria 8 and 9.

10. The Authority will construct Portfolios with the aim of meeting all of criteria 1-7. If one or more criteria cannot be met, portfolios will be constructed to minimise the criteria that cannot be met.

Portfolio construction

No	Criteria
1	Maximise the utilisation of public sector resources
2	List of reserved audits agreed with the Auditor General and Accounts Commission

3	Identified public bodies requiring auditor rotation under the Ethical Standard
4	If all Audit Firms have conflicts, the individual audit shall default to Audit Scotland
5	Audit portfolios to be of equivalent size to ensure equal treatment of bidders
6	Audit portfolios will also be subject to any declared maximum portfolio sizes in order to avoid any potential discrimination to small and medium enterprises
7	Late declaration of conflicts may result in a reduced size of portfolio as this would have an impact on other bidders' portfolios

11. The Authority will construct Portfolios with the aim of meeting all criteria. If one or more criteria cannot be met, Portfolios will be constructed to minimise the criteria that cannot be met.

12. Portfolios will not include any specialist audits which a firm has not bid for.

Contractual documentation

13. Following the construction of the audit appointment portfolios in accordance with clauses 7. to 12. of this Framework Schedule 3 (Award Procedures) the Authority will issue a Direct Award to the Framework Contractors by sending (including electronically) a completed signed Letter of Appointment, draft contained at Annex A.

14. The Parties agree that any document or communication (including any document or communication in the apparent form of a Call-off Contract) which is not as described in these clauses 5. to 17. shall not constitute a Direct Award under this Framework Agreement.

15. On the basis set out above, a Direct Award to the successful Framework Contractor is made up of the following components:

- 15.1.** the Call-off Standard Terms of Supply set out at Schedule 5 of this Framework Agreement;
- 15.2.** a completed Letter of Appointment contained at Annex A to this Schedule 3 below;
- 15.3.** the applicable parts of the Schedule 1 – Specification and Schedule 4 – Management Arrangements of this Framework Agreement, as may be supplemented by information set out and/or referred to in the Letter of Appointment;
- 15.4.** the applicable parts of the Pricing Schedule set out in Schedule 2 of this Framework Agreement, as may be supplemented by information set out and/or referred to in the Letter of Appointment contained at Annex A; and
- 15.5.** any relevant provisions applicable to the Call-off Contract as set out in the Framework Agreement.

16. On receipt of a Letter of Appointment as described in clause 13. from the Authority the Contractor shall accept the Call-off Contract by promptly signing and returning (including by electronic means) a copy of the Letter of Appointment to the Authority.

17. On receipt of the signed Letter of Appointment from the Contractor, the Authority shall send (including by electronic means) a written notice of receipt to the Contractor within two (2) Working Days and a Call-off Contract shall be formed.

Further competition procedure

18. Where a new body is created that is to be audited under appointment by the Auditor General or the Accounts Commission, the Auditor General or the Accounts Commission may:

- Appoint a member of staff of Audit Scotland
- Directly appoint a firm
- Run a further competition procedure

19. The decision on which option to adopt rests with the Auditor General and the Accounts Commission. The main objectives are to secure best value in audit, maintain the proportion of work between Audit Scotland and the firms, and treat all firms equally.

20. Best value in audit may be achieved by a direct award to a firm if, for example, a new body shares premises or key systems with an existing body audited by that firm.

21. The Authority shall inform all firms on the framework contract where a new appointment is made and explain the rationale for the method of appointment.

22. Where the Auditor General or the Accounts Commission open an appointment to further competition procedure, the Authority shall:

22.1. develop a Statement of Requirements setting out its requirements for the Services. The Statement of Requirements shall cover the following topics as a minimum:

- Call-off Contract Duration
- Summary of Service requirements
- Management arrangements for the delivery of the services
- Details of any additional Contractor personnel security requirements
- Details of any Contractor Sensitive Information
- Details of any Exit plan
- Pricing Schedule

- Other Supplementary Details
- 22.2.** apply the Further Competition Award Criteria in accordance with the price/quality ratio set out in clauses 23. to 24. below
- 22.3.** amend or refine the Letter of Appointment and Standard Terms of Supply to reflect the Services Requirements only to the extent permitted by and in accordance with the requirements of the Regulations
- 22.4.** invite Framework Contractors by conducting a Further Competition Procedure for its Service Requirements in accordance with the award procedures under Schedule 3
- 22.5.** set a time limit for the receipt of tenders which takes into account factors such as the complexity of the subject matter of the contract and the time needed to send in tenders
- 22.6.** on the basis set out above, award its Call-off Contract to the successful Framework Contractor in accordance with clauses 29. to 31. which Call-off Contract is made up of the following components:
- the Call-off Standard Terms of Supply set out at Schedule 5 of this Framework Agreement;
 - a completed Letter of Appointment amendment contained at Annex B to this Schedule 3 below;
 - the applicable parts of Schedule 1 – Specification and Schedule 4 – Management Arrangements of this Framework Agreement, as may be supplemented by information set out and/or referred to in the Letter of Appointment amendment;
 - the applicable parts of the Pricing Schedule set out in Schedule 2 of this Framework Agreement, as may be supplemented by information set out and/or referred to in the Letter of Appointment amendment contained at Annex B; and
 - any relevant provisions applicable to the Call-off Contract as set out in the Framework Agreement;
- 22.7.** provide unsuccessful Framework Contractors with written feedback in relation to the reasons why their tenders were unsuccessful
- 22.8.** award each contract to the firm which has submitted the best tender on the basis of the award criteria specified below based on the framework agreement.

For a new body that is not a specialist audit

23. Where the new body is not a specialist audit (which may include but is not limited to those mentioned at clause 1.5) the award will be made on the same Most Economically Advantageous Tender basis as the initial award on 80% Quality: 20% Price in the following way:

- Questions 1.1 – 1.10 and 2.2 – 2.3 will be carried over in the award process for the Call-off Contract.
- Question 2.1 should be re-submitted with a price for the new audit only. The price should be for years one, two and three of the audit, weighted:
 - Year one: 25%
 - Year two: 25%
 - Year three: 50%.

For a new body that is a specialist audit

24. Where the new body is a specialist audit (which may include but is not limited to those mentioned at clause 1.5) a new Lot will be created. **Error! Reference source not found.** The award will be made on the same Most Economically Advantageous Tender basis as the initial award on 80% Quality: 20% Price in the following way:

- Question 1.1 should be re-submitted with specific reference to support and expertise related to the specialist audit.
- Questions 1.2, 1.4 – 1.10 and 2.2 – 2.3 will be carried over in the award process for the Call-off Contract.
- Question 1.3 should be re-submitted with specific reference to the relevant experience of the staff you propose to use on the specialist audit.
- Question 2.1 should be re-submitted with a price for the new audit only. The price should be for years one, two and three of the audit, weighted:
 - Year one: 25%
 - Year two: 25%
 - Year three: 50%.

The Contractor's Obligations

25. The Contractor shall in writing, by the time and date specified by the Contracting Authority following an invitation to tender pursuant to clause 22.4 above, provide the Contracting Authority with either:

- 25.1.** a statement to the effect that it does not wish to tender in relation to the relevant Service Requirements; or
- 25.2.** the full details of its tender made in respect of the relevant Statement of Requirements. In the event that the Contractor submits such a tender, it should include, as a minimum:
 - 25.2.1.** an email response subject line to comprise unique reference number and Contractor name, so as to clearly identify Contractor;

25.2.2. a brief summary, in the email (followed by a confirmation letter), stating that the Contractor is bidding for the Statement of Requirements;

25.2.3. a proposal covering the Service Requirements.

26. The Contractor shall ensure that any prices submitted in relation to a Further Competition Procedure held pursuant to these clauses 18. to 24. shall be based on the Framework Schedule 2 – Pricing Schedule.

27. The Contractor agrees that:

27.1. all tenders submitted by the Contractor in relation to a Further Competition Procedure held pursuant to these clauses 18. to 24. shall remain open for acceptance by the Authority for ninety (90) Working Days (or such other period specified in the invitation to tender issued by the Authority in accordance with the Call-off Procedure); and

27.2. all tenders submitted by the Contractor are made and will be made in good faith and that the Contractor has not fixed or adjusted and will not fix or adjust the price of the tender by or in accordance with any agreement or arrangement with any other person. The Contractor certifies that it has not and undertakes that it will not:

27.2.1. communicate to any person other than the person inviting these tenders the amount or approximate amount of the tender, except where the disclosure, in confidence, of the approximate amount of the tender was necessary to obtain quotations required for the preparation of the tender; and

27.2.2. not enter into any arrangement or agreement with any other person that he or the other person(s) shall refrain from submitting a tender or as to the amount of any tenders to be submitted.

No award

28. Notwithstanding the fact that the Authority has followed a procedure as set out above in clauses 18. to 24. , the Authority shall be entitled at all times to decline to make an award for its Services Requirements. Nothing in this Framework Agreement shall oblige the Authority to award any Call-off Contract.

Call-off award procedure

29. Subject to clauses 1. to 28. above, the Authority may award a Call-off Contract with the Contractor by sending (including electronically) a completed signed Letter of Appointment amendment, draft contained at Annex B. The Parties agree that any document or communication (including any document or communication in the apparent form of a Call-off Contract) which is not as described in this clause 29. shall not constitute a Call-off Contract under this Framework Agreement.

30. On receipt of a Letter of Appointment amendment as described in clause 29. from the Authority the Contractor shall accept the Call-off Contract by promptly signing and returning (including by electronic means) a copy of the Letter of Appointment to the Authority.

31. On receipt of the signed Letter of Appointment amendment from the Contractor, the Authority shall send (including by electronic means) a written notice of receipt to the Contractor within two (2) Working Days and a Call-off Contract shall be formed.

Schedule 3 Annex A

Letter of Appointment

Date

Address
Address
Address
Address
Address
Address
Address
Address

Dear Name

External audit – financial years 2022/23 – 2026/27

Under the powers in Section 97 of the Local Government (Scotland) Act 1973 ('the 1973 Act') and/or Section 21 of the Public Finance and Accountability (Scotland) Act 2000 ('the 2000 Act'), I am directed by the Auditor General for Scotland ('the Auditor General') and/or the Accounts Commission for Scotland ('the Accounts Commission'), as appropriate, to offer to [firm] ('the auditor') appointment as external auditor of the following bodies or accounts ('the bodies' or 'the body'):

Bodies falling within the remit of the Auditor General

- XXXX
- XXXX

Bodies falling within the remit of the Accounts Commission

- XXXX
- XXXX

* the appointment to each Local Authority includes appointment to the registered charities for which that authority is the sole Trustee.

Where one body or account only is listed above any reference in this letter to 'bodies' shall be read in the singular. The appointment(s) are subject to the Framework Agreement between Audit Scotland and [firm name].

Statutory successors and other new bodies

Except insofar as otherwise provided, appointment as external auditor of any of the bodies named in this letter includes appointment as the external auditor of its statutory successor or, where there is more than one statutory successor, to

the statutory successor(s) specified by the Auditor General or the Accounts Commission.

The Auditor General or the Accounts Commission may, at their absolute discretion, determine that clause 2 will not apply in respect of any body named in this letter.

If new statutory or other bodies are formed during the period of appointment which fall within the remit of the Auditor General or the Accounts Commission, or other existing bodies are brought within the remit of Auditor General or the Accounts Commission, the Auditor General or the Accounts Commission may run a mini-competition in order to add one or more of these bodies to the list of bodies covered by the terms of this letter.

Period of appointment

The appointment is for the audit of the bodies for the financial years 2022/23 to 2026/27 inclusive, and, unless the Auditor General and/or the Accounts Commission at their absolute discretion decides to extend the audit appointment to one or more of the bodies for up to two further years, will terminate automatically upon completion thereof.

Yours sincerely

Elaine Boyd
Director, Audit Quality and Appointments

On behalf of [firm name] I the undersigned do hereby accept the appointment as external auditor to provide the services specified in the Invitation to Tender for the external audit of public sector bodies in Scotland of September 2021 in accordance with our Tender Response, at the prices offered in our Tender Response and in accordance with the Framework Agreement referred to in this letter of appointment.

Signature	
Name	
Position	
Name of tenderer	
Address	
Date	

Schedule 3 Annex B

Letter of Appointment Amendment

Date

Address
Address
Address
Address
Address
Address
Address
Address

Dear [Name]

Audit appointments – financial years 2020/21 to 2021/22

The [Auditor General for Scotland, under section 21 (4) of the Public Finance and Accountability (Scotland) Act 2000 and/or Accounts Commission, under section 97 (6) of the Local Government (Scotland) Act 1973], must [personally] decide who is to audit the accounts that fall within [his/their] remit.

The [Auditor General for Scotland and/or Accounts Commission] has decided that with effect from the [2XXX/YY] financial year, the following [body/bodies] [is/are] added to those listed in your letter of appointment dated [Day Month Year] as amended by your letter(s) of [Day Month Year and Day Month Year as applicable]:

- [Body name]

If you have any questions, please do not hesitate to contact me.

Yours sincerely

Elaine Boyd
Director – Audit Quality and Appointments

Schedule 4

Management arrangements

This and the following 4 pages comprise Schedule 4 to the Framework Agreement between the Authority and XXX.

Introduction

1. The work undertaken in accordance with this framework agreement shall be conducted in accordance with the following management arrangements.

Definitions

2. In these Management arrangements, the following words shall have the following meanings:

- 2.1. **“Audited body”** means the body to which the Contractor has been appointed.
- 2.2. **“Authority”** means the Auditor General for Scotland and Accounts Commission, acting through Audit Scotland.
- 2.3. **“Contractor”** means XXX.
- 2.4. **“Staff”** means all partners, members, employees, agents, consultants and individual contractors of the Contractor, and Affiliate of the Contractor and/or of any sub-contractor.

Quality appraisal

Audit Quality Framework

3. The Authority publishes an Audit Quality Framework that describes its approach to achieving world-class audit quality across all audit work and providers. The Authority will periodically refresh the Framework to reflect industry developments in audit quality.

4. The Framework enables the Authority to assess audit quality and provide a strong evidence base through Key Performance Indicators (KPIs), external reviews of audit quality and application of the FRC’s audit file grading system. The Authority reports publicly on audit quality to ensure that there is full transparency to all stakeholders.

5. The quality of work performed by the auditor will be regularly assessed by the Authority. For the purpose of this assessment, the auditor is required to:

- Submit to the Authority, when requested and in the format prescribed, information about the arrangements in place to meet the requirements of the FRC’s International Standards of quality control/management currently in force.

- Notify to the Authority any significant changes to such arrangements as soon as practicable.
 - Submit to the Authority an annual quality report in the form periodically specified by the Authority.
 - Permit officers of the Authority or such persons authorised for the purpose by the Authority full access to the files of audits carried out under appointment as part of a periodic programme of quality monitoring.
 - Ensure that at least one audit carried out under appointment is subject to internal quality control monitoring each year and submit the results of all quality monitoring work carried out on audits under this appointment within 3 months of such work being completed.
 - Unless otherwise agreed by the Authority, submit the results of any audit monitoring visit carried out by the Institute of Chartered Accountants of the country relevant to the auditor within 3 months of any such visit being reported.
- 6.** The Authority will also consider as part of its quality appraisal framework:
- The extent to which the Contractor meets audit reporting deadlines prescribed by statute or the Authority, and whether other audit outputs are delivered within planned timescales.
 - The results of reviews by the Authority's staff of the Contractor's audit outputs.
 - The Audited bodies' views of the standard of service received from the Contractor.
- 7.** If requested to do so, the Contractor will advise the Authority of:
- The names, qualifications and public sector audit experience of Partners, Directors, Senior Audit Managers and Audit Managers employed on the audit. In the event of changes in such personnel, the Contractor will provide the Authority on request with similar information in respect of replacement or additional staff.
 - The number of days input to the audit by each person employed.

Progress reporting

- 8.** The Contractor shall submit progress reports to the Authority about the audit of each Audited body, at such dates and in such format as the Authority prescribes.
- 9.** Such progress reports will mainly require the Contractor to identify the proportion of the audit undertaken by the prescribed date and to demonstrate the extent to which the required and planned outputs from the audit have been delivered.

Basis of remuneration for audits

Auditor remuneration

- 10.** Contractors are paid by the Authority for work undertaken, not by the Audited body. The Authority sets the amount to be paid to Contractors (Auditor remuneration) each year for each audit carried out under appointment.
- 11.** For 2022/23 audits, auditor remuneration will be the amount quoted for the work in the tender for each body to which the Contractor is appointed.
- 12.** For each subsequent year, auditor remuneration will be adjusted based on the cost of living changes in the salary costs for Audit Scotland staff at the previous 1 April, and any changes to the scope of audits due to changing professional standards or changes to bodies. Grade related rates quoted in the tender will also be updated by the cost of living changes in the salary costs for Audit Scotland staff at the previous 1 April.
- 13.** Auditor remuneration provides for the responsibilities specified in the Code of Audit Practice and in the Guidance on planning the audit that is issued annually by the Authority. This assumes attendance at appropriate meetings such as attending audit committees or equivalent, other meetings (including meetings with the Authority and other auditors) and training workshops, and any travel required.
- 14.** These requirements may vary over the audit appointment term. Auditor remuneration will be reviewed to reflect any significant changes in the work expected.

Expected and agreed fees

- 15.** Audit Scotland levies statutory charges on Audited bodies to recover the costs of audit where empowered to do so. Audit Scotland is not empowered to levy charges on certain bodies in the central government sector so costs attributable to these bodies are met by Audit Scotland from the Scottish Consolidated Fund.
- 16.** The Authority sets expected fees each year that consist of auditor remuneration and central costs. Central costs include pooling to ensure that the amount paid by an Audited body is not dependent on their Contractor or location, and other Audit Scotland costs. This includes travel and subsistence which is reimbursed by the Authority.
- 17.** Contractors agree a fee with the Audited body each year during the audit planning process based on the expected fee. Contractors should agree fees even with bodies Audit Scotland is not empowered to levy charges on.
- 18.** Contractors may increase the auditor remuneration part of the fee to reflect the circumstances and local risks within the Audited body. Increases to auditor remuneration should be based on the grade related rates.
- 19.** Contractors may agree increases to auditor remuneration by up to 10 per cent, or 20 per cent for bodies below the threshold. The threshold for 2020/21 audits was an audit fee of £26,000. Contractors must obtain approval from the

Authority for any increases beyond 10 per cent, or 20 per cent for bodies below the threshold.

20. The Authority will issue more detailed guidance annually about how Contractors should claim audit fees from the Authority and will provide fee claim forms that Contractors must use for this purpose.

21. The Authority normally advises Audited bodies and Contractors about the expected fees in December of the year subject to audit.

Additional audit work

22. Contractors may identify a need to do additional work not provided for in the audit fee. The costs of such work should be added to the audit fee and based on the grade related rates quoted for in Schedule 2. Contractors must obtain approval from the Authority for any increases to auditor remuneration beyond 10 per cent, or 20 per cent for bodies below the threshold.

23. Contractors may be requested to do additional work by the Authority, for example relating to the conduct of national performance audits by the Authority or investigating correspondence from the public referred to the Contractor by the Authority. In these cases, the costs of such work should be based on the grade related rates quoted for in Schedule 2. The Authority will state whether such work should be added to the audit fee or paid directly by the Authority on completion of the work requested.

Travel and subsistence

24. In addition to the auditor's remuneration, the Authority will reimburse reasonable travel and subsistence expenses necessarily incurred by the Contractor in carrying out the audit. However, unless expressly agreed by the Authority:

- Contractors must claim travel and subsistence costs from the location named in their tender which is closest to the audited body for at least 50 per cent of journeys undertaken.
- If the Contractor operates from an office outside Scotland, reasonable travel expenses will be claimed as if the Contractor's office was in Glasgow, Edinburgh or Aberdeen, whichever is closer to the audit location.
- If an office listed in the tender is closed and an audit is subsequently serviced from a more distant office, Contractors must claim travel and subsistence costs as if staff had travelled from the office location listed in the tender.

Payment of fees

25. The Contractor shall submit claims for fees and expenses in such form and frequency as the Authority prescribes. The prescribed arrangements for agreed fees are:

- The Contractor may submit a single initial claim for 95 per cent of the expected remuneration which will be paid by the Authority in equal instalments throughout the currency of the audit.
- The Contractor must submit a final fee claim consisting of the balance of the agreed remuneration and the Contractor's travel and subsistence expenses (as defined previously) on completion of the audit and submission of a final progress report.

26. The Authority will pay the fee within thirty (30) days of receipt by the Authority of a properly completed final fee claim for sums properly due.

27. The Contractor is required to make available to the Authority such records as may be requested from time to time in support of fee claims, including travel and subsistence expenses. The Contractor will also provide such information as the Authority may require at its financial year end to determine the amount of any unpaid fees and travel and subsistence expenses that require to be included in its financial statements.

28. The parties will pay interest on any amount payable under the Contract not paid on the due date, from the due date to the date of payment, at two (2) per cent per annum above the base lending rate of the Royal Bank of Scotland plc from time to time.

29. Payment by the Authority shall be without prejudice to any claims or rights, which the Authority may have against the Contractor, and shall not constitute any admission by the Authority as to the performance by the Contractor of its obligations under the Contract.

30. Without prejudice to any other right or remedy, the Authority reserves the right to set off any amount owing at any time from the Contractor to the Authority against any amount payable by the Authority to the Contractor under the Contract, or any other contract between the Authority and the Contractor.

Schedule 5

Standard terms of supply

This and the following 10 pages comprise Schedule 5 to the Framework Agreement between the Authority and XXX.

Introduction

1. Audit Scotland, established by the Public Finance and Accountability (Scotland) Act 2000 and having its head office at 102 West Port, Edinburgh EH3 9DN (“Audit Scotland”) wishes to purchase, on behalf of the Auditor General for Scotland and the Accounts Commission, the Services from the Contractor and the Contractor hereby agrees to provide such Services, in accordance with these Conditions. These terms should be read in conjunction with the Management Arrangements that apply to the Framework Agreement.

Definitions

2. In these Conditions, the following words shall have the following meanings:

- 2.1. “**Applicable Law**” means all applicable statutes, statutory instruments, orders, rules, regulations, instruments, provisions and codes of practice in force from time-to-time including, but not limited to, health and safety legislation, Data Protection Legislation, the marking of hazardous goods legislation, the provision of data sheets for hazardous materials legislation and all provisions/regulations relating to food;
- 2.2. “**Appointed audit**” means the statutory appointment by the Auditor General or the Accounts Commission to conduct the audit;
- 2.3. “**Audited body**” means the body to which the auditor has been appointed;
- 2.4. “**Audit Scotland IPR**” means any and all IPR belonging to Audit Scotland, or which Audit Scotland has a right to use, and which are made available by Audit Scotland in order to enable the Contractor to provide the Goods and/or Services;
- 2.5. “**Authorised**” means signed by an Authorised Officer;
- 2.6. “**Authorised Officer**” means an Audit Scotland employee authorised, either generally or specifically, by the Authority to issue a Purchase Order;
- 2.7. “**Authority**” means the Auditor General for Scotland and Accounts Commission, acting through Audit Scotland;

- 2.8. **“Business Days”** means any day from Monday to Friday inclusive (excluding all public, statutory and bank holidays) in Scotland when banks in Glasgow and Edinburgh are open for business;
- 2.9. **“Commencement Date”** means the date of commencement of the appointed audit, as specified in the direct award or successful Further competition procedures, or as otherwise agreed between the parties;
- 2.10. **“Conditions”** means these terms and conditions;
- 2.11. **“Confidential Information”** means all information of a confidential or proprietary nature (whether in oral, written or electronic form) belonging or relating to the Authority or the body being audited, its business affairs, finances, activities and Audit Scotland IPR;
- 2.12. **“Contract”** means the Framework Agreement and letter of appointment as amended in respect of any Further competition procedures and the Contractor’s acceptance of those, incorporating these Conditions together with any applicable Order Amendments;
- 2.13. **“Contractor”** means XXX.
- 2.14. **“Contractor IPR”** means all IPR owned by the Contractor, or to which the Contractor has rights, prior to the Commencement Date and which is or should be made available by the Contractor in order to enable the Authority to receive the Services or make use of the Deliverables; and
- 2.15. **“Contractor Party”** means the Contractor’s agents and contractors, including each Sub-Contractor;
- 2.16. **“Controller”, “Processor”, “Data Subject”, “Data Subject Access Requests”** and **“Personal Data”** have the meanings given in the Data Protection Legislation;
- 2.17. **“Data Protection Legislation”** means any law, statute, subordinate legislation, regulation, order, mandatory guidance or code of practice, judgment of a relevant court of law, or directives or requirements of any regulatory body which relates to the protection of individuals with regard to the processing of Personal Data to which a Party is subject including the Data Protection Act 2018 and any statutory modification or re-enactment thereof and the UK GDPR (having the meaning given in the Data Protection Act 2018);
- 2.18. **“Deliverables”** means those deliverables created, developed or otherwise resulting from the provision of the Services, including, without limitation, any deliverables described in the Contract;
- 2.19. **“IPR”** means all patents, rights to inventions, trade marks, registered designs (and any applications for any of the foregoing), copyright (including rights in software, such as object and source code), database rights, unregistered design rights, moral rights, rights in and to trade names, business names, domain names, product names and logos, databases, inventions, discoveries, know-how, trade secrets

and any other intellectual or industrial property rights in each and every part of the world together with all applications, renewals, revisals and extensions;

2.20. “ITT Conditions” means any conditions emanating from an invitation to tender;

2.21. “Key Personnel List” has the meaning set out in clause 24. ;

2.22. “Order Amendment” means an amendment to the Services detailed in the Contract and issued to the Contractor. Each Order Amendment issued shall have precedence over any earlier Order Amendment;

2.23. “Other Personnel List” has the meaning set out in clause 26. ;

2.24. “Reports” means the oral or written reports to be provided to the Authority by the Contractor, at the Authority’s request, detailing the progress and performance of the Services;

2.25. “Resultant IPR” means all IPR created, developed or otherwise resulting directly or indirectly from the provision of the Services including, without limitation, IPR in any Deliverables;

2.26. “Services” means the services to be supplied by the Contractor to the Authority under the Contract, as described in the Framework Agreement, letter of appointment as amended in respect of any Further competition procedures or as otherwise agreed between the parties in writing from time to time;

2.27. “Services Specification” means the description or specification for the Services, agreed by the Authority and the Contractor;

2.28. “Sub-Contract” means any contract between the Contractor and any third party, made wholly or substantially for the purpose of performing (or contributing to the performance of) the whole or any part of this Framework Agreement ;

2.29. “Sub-Contractor” means the third parties that enter into a Sub-Contract with the Contractor;

3. Headings in these Conditions are for ease of reference only and shall not affect the construction or interpretation of any Condition.

4. Words importing the singular shall include the plural and vice versa and words denoting any gender shall include all genders.

5. Reference to statutes, any statutory instrument, regulation, or order shall be construed as a reference to such statute, statutory instrument, regulation, or order as amended or re-enacted from time to time.

Contractor’s status

6. At all times during the period the Contractor is an independent service provider and nothing in these Standard Terms of Supply establishes a contract of employment, a relationship of agency or partnership or a joint venture

between the Parties or between the Authority and any Contractor Party. Accordingly, neither Party is authorised to act in the name of, or on behalf of, or otherwise bind the other Party save as expressly permitted by the terms of the Contract.

Application of terms

7. Subject to Clause 6, these Conditions, the Framework Agreement and Letter of Appointment as amended in respect of any Further competition procedures, and any applicable Order Amendments shall constitute the whole agreement between the Authority and the Contractor and shall govern the Contract to the entire exclusion of all other terms and conditions (including the Contractor's terms and conditions or those implied by trade, custom or practice).

8. A contract shall be deemed to be accepted by the Contractor and the contract shall be formed once the Contractor has communicated acceptance to the Authority or (if earlier) the Contractor performs the Services.

9. Unless otherwise Authorised in writing by the Authority, these Conditions are the only conditions upon which the Authority is prepared to purchase Services from the Contractor.

10. The Contract supersedes all prior agreements and arrangements of whatever nature and sets out the entire agreement and understanding between the parties relating to its subject matter.

11. The Authority may vary any Contract by sending an Order Amendment to the Contractor which will be enforceable upon signing by the Authority and the Contractor. However, if the Authority should find it necessary to give an order orally to the Contractor in the first instance, the Contractor must comply with any such oral order in anticipation of written confirmation being issued in the form of an Order Amendment within two Business Days of any oral agreement but the absence of written confirmation within that period shall not cancel the oral order.

Notices

12. Any notice or other communication which is to be given by a Party to the other under the Standard Terms of Supply must be:

12.1. given in writing;

12.2. addressed in accordance with the Letter of Appointment;

12.3. sent by letter (delivered by hand, first class post or by recorded delivery or special delivery) or e-mail.

13. Provided the relevant communication is not returned or rejected as undelivered, the notice or communication is deemed to have been given:

13.1. Two (2) Working Days after the day on which the letter was posted; or

13.2. Four (4) Working Hours after the communication was sent, in the case of fax or email.

14. Either Party may change its address details by serving a notice in accordance with this clause.

15. Notices under clauses 120 to 122 (Termination on Insolvency or Change of Control) of the Framework Agreement may be sent to the Authority's trustee, receiver, liquidator or administrator, as appropriate.

Price

16. In consideration of the Contractor's performance of its obligations relating to the Contract, the Authority must pay:

16.1. the price due in accordance with the Contract as set out in Schedule 2 as adjusted annually under the arrangements in Schedule 5; and

16.2. a sum equal to the value added tax chargeable at the prevailing rate.

17. The Contractor may not suspend the provision of services if it considers that the Authority has failed to pay the price due.

Recovery of sums due

18. Wherever under the Contract any sum of money is recoverable from or payable by the Contractor to the Authority, the Authority may deduct that sum from any sum due to the Contractor whether under the Contract or otherwise.

19. The Contractor must make any payments due to the Authority without any deduction whether by way of set-off, counterclaim, discount, abatement or otherwise unless the Contractor has a valid court order requiring an amount equal to such deduction to be paid by the Authority to the Contractor.

Services

20. The Contractor shall provide the Services with respect to each body to which they are appointed under the Letter of Appointment, as periodically amended, with effect from the Commencement Date:

20.1. in accordance with the Specification and Service Levels and the Letter of Appointment;

20.2. in accordance with the particular requirements of the Letter of Appointment; and

20.3. to the satisfaction of the Authority acting reasonably.

21. The Contractor will provide the Services:

21.1. in a proper, diligent, expeditious and professional manner and with all reasonable skill and care and in accordance with best practice in the industry;

21.2. dutifully, timeously and in good faith;

21.3. in all respects in accordance with the Specification and Service level, Clauses 26 – 29 and 33 – 35; and

21.4. in accordance with Applicable Law.

22. The Contractor warrants, undertakes and represents that:

22.1. it has full capacity and authority and all necessary licences, permits and consents to enter into and to perform the Contract; and

22.2. the provision of the Services will not infringe the IPR of any third party.

23. The Contractor shall deliver to the Authority the Deliverables at the times and on the dates specified in the annual guidance on planning the audit (or as otherwise agreed between the parties), to the satisfaction of the Authority. Contractors will not be held responsible for late submission if they can demonstrate that the delay was caused by audited bodies, and Contractors took all practicable steps to encourage bodies to meet the dates.

24. The Contractor shall provide the Authority with a list of any of the Contractor's personnel who sign audit opinions ("Key Personnel List") and such Key Personnel List shall be deemed to be incorporated into the contract.

25. The Contractor shall not, without prior written approval from the Authority, remove or add any person from or to the Key Personnel List, except for removal by reason of long-term sickness, maternity, paternity, adoption or parental leave, termination of employment or equivalent extenuating circumstances. Where such extenuating circumstances arise or are foreseeable, the Contractor must immediately give notice of that fact to the Authority.

26. If instructed to do so by the Authority and to facilitate the transfer to a successor of the Contractor the Contractor shall also provide a list of the names of all other persons who may be involved in the provision of the Services ("Other Personnel List").

27. If instructed to do so by the Authority and to facilitate the transfer to a successor of the Contractor, the Contractor shall provide details of the nature of the Services provided by personnel on the Key Personnel List and the Other Personnel List.

28. If the Contract requires any works or Services to be performed on the Authority's premises, the Contractor shall ensure that it, and shall procure that, the Contractor Parties and its Staff shall comply with all Applicable Laws and all policies that the Authority notifies to the Contractor from time to time.

29. The Contractor shall indemnify the Authority, in full, against all claims, demands, actions, costs, expenses (including but not limited to legal costs and disbursements on a solicitor and client basis) losses and damages arising from or incurred or paid by the Authority as a result of or in connection with:

29.1. breach of any warranty given by the Contractor in relation to the Services; and

29.2. any act or omission of the Contractor, a Contractor Party or its Staff in supplying, delivering and performing the Services.

Responsibilities

30. The Contractor's duty of care in respect of the audit of local authority bodies extends only to the audited body, the Accounts Commission, the Controller of Audit and Audit Scotland. For other bodies the Contractor's duty of care extends only to the audited body, the Auditor General, Audit Scotland and the Scottish Parliament, as a body. Except for the Controller of Audit and the Auditor General this duty of care does not extend to individual members, officers, Members of the Scottish Parliament or citizens.

31. The Contractor is required to support any group auditor through acting as a component auditor for any bodies to which they are appointed by the Auditor General or the Accounts Commission which are consolidated within the accounts of bodies that are under the remit of the Auditor General or the Accounts Commission. The Contractor is required to co-operate fully, attend such meetings, provide such explanations and make available such audit records as the group auditor may reasonably require in accordance with the Specification and Service level, Clause 26.

32. For the purpose of Whole of Government Accounts (WGA), the Contractor recognises that the National Audit Office, as the primary auditor of the WGA may place reliance in accordance with the Specification and Service level, Clause 26 on any report(s) and opinions that the Contractor may give on statements provided by the audited body in connection with the preparation of WGA. The Contractor shall have regard to any memorandum of understanding that may be developed in this area between the Authority and other stakeholders.

33. Reports by the Contractor to grant paying agencies are prepared for the sole use of those agencies or others having statutory rights of access.

Period of appointment

34. The appointment is for the audit of the audited body for the financial years 2022/23 to 2026/27 inclusive, and, unless the Auditor General and/or the Accounts Commission at their absolute discretion decides to extend the audit appointment for up to two further years, will terminate automatically upon completion thereof.

35. The Authority may terminate the appointment of the Contractor to the audited body at any time, if any of the circumstances in clauses 114 to 119 of the Framework Agreement occur.

36. The Authority may terminate the appointment of the Contractor to the audited body at any time, if any of the following occur:

- The Contractor fails to perform audit work to an adequate standard which is acceptable to the Authority.
- Conduct by the Contractor which, in the opinion of the Authority, significantly conflicts with the duties, powers or responsibilities of the appointment.

- Refusal by the Contractor to agree to any reasonable variation to these terms and conditions proposed by the Authority, including refusal by the Contractor to undertake any reasonable additional duties that may be necessary in the future as a result of developments in public sector accounting or auditing.
- The body ceases to exist, or is subject to a material change which, in the opinion of the Authority, requires the audit appointment to be terminated.
- There is a structural re-organisation involving the sector in which the body operates (eg the local authority or health sector) which, in the Authority's opinion, requires the auditors of some or all of the bodies in the sector to be changed.
- There is a change of law, rule, regulation or professional standard, or circumstances arise that would cause the relationship between the Contractor and Authority to violate such law, rule, regulation or professional standard or would prejudice any Contractor Staff's ability to comply with applicable auditor independence requirements.
- A conflict of interest arises or is identified which prevents the Contractor from complying with professional and/or legal requirements.

37. In the event of the termination of the Contractor's appointment to an audit, the Authority will remunerate the Contractor for all work undertaken in relation to that audit, up to the date of termination.

38. At the end of the Contractor's appointment, the Contractor will take all reasonable steps to assist any successor external auditor appointed to the audit in accordance with the Exit Strategy as specified in Schedule 8.

Audit outputs

39. The auditor's remuneration represents the remuneration payable to the Contractor provided the Contractor completes the audit in accordance with the terms of the Framework, Schedule 1 – Specification and Service level and the Code and delivers the audit outputs specified in the Code and agreed with the body.

40. While the Contractor is required to provide the Authority with copies or access to all such audit outputs, for statutory or other purposes relating to its functions, the ownership of outputs created by the Contractor and any supporting working papers remains with the Contractor.

41. The Contractor accepts that the Authority will publish all principal audit outputs (including but not limited to annual audit plans, interim reports and annual audit reports) on its website in the form in which they were provided by the Contractor.

Assignment and sub-contracting

42. The Contractor may not assign or sub-contract the audit, or any part of the audit, of the body without the prior written approval of the Authority.

Dispute resolution

43. The Parties must attempt in good faith to resolve any dispute between them arising out of or in connection with the Contract in accordance with the Management Arrangements.

44. Any dispute or difference arising out of or in connection with the Contract, including any question regarding its existence, validity or termination, which cannot be resolved in accordance with the Management Arrangements, shall be determined by the appointment of a single arbitrator to be agreed between the Parties, and failing agreement within 14 days after either Party has given to the other a written request to concur in the appointment of an arbitrator, by an arbitrator to be appointed by the Scottish Arbitration Centre on the written application of either Party. The seat of the arbitration shall be in Scotland. The language used in the arbitral proceedings shall be English.

45. Any arbitration under clause 100 of the Framework Agreement is subject to the Arbitration (Scotland) Act 2010.

Non-audit services

46. During the currency of this appointment the Contractor shall not accept appointment as internal auditor to the audited body. Similarly, neither the Contractor nor any other section of the Contractor's firm or an associated firm shall, without the prior approval of the Authority, accept any consultancy assignment or advisory service (non-audit services) from or in connection with the audited body to which this appointment relates.

47. The provision of non-audit services by appointed auditors could compromise an auditor's actual or perceived independence. Contractor must seek approval from the Authority for any proposed non-audit service in advance of the work starting.

48. The Authority considers Non-audit services based on the requirements of the Ethical Standard that is currently in force and the Code of Audit Practice. The wider scope of public sector audit increases the circumstances where an actual or perceived conflict may arise.

Other work

49. The Authority may from time to time require the Contractor to carry out other work not taken into account in the calculation of expected fee and not forming part of the agreed fee for the audit. Such work is most likely to be related to the conduct of national performance audits by the Authority or investigating correspondence from the public referred to the auditor by the Authority but may be related to other work within the remit of the Authority.

50. The Authority undertakes to consult with the Contractor over the scope and provide the Contractor with reasonable notice of the requirement to undertake such work. The work referred to in this clause shall be remunerated in the manner described in clauses 22 to 23 of the Management arrangements.

Long association with the audit

51. Where the Contractor has been, or will be, appointed to the audit of a council or a health board (excluding a special health board), Scottish Water, or Scottish National Investment Bank, the auditor shall comply with the Ethical Standard as if these bodies were listed companies.

Confidentiality and Data protection

52. The Contractor acknowledges that Personal Data may be Processed in connection with the Services under this Contract. For the purposes of any such Processing, the Parties agree that the Contractor:

52.1. acts as an independent Controller.

52.2. shall only share Personal Data with the Authority where it is fair and lawful to do so; and

52.3. shall otherwise comply with its obligations under the Data Protection Legislation.

53. The Contractor shall (and shall procure that its Staff and Contractor Parties shall) keep secret and confidential at all times both during and after the Contract, any and all Confidential Information which comes into its possession at any time either before, during or after the period of the Contract.

54. The Contractor shall not use, copy, disclose or divulge such Confidential Information to any third party except with the express written consent of the Authority. Any such permitted disclosure shall not affect the ownership of such Confidential Information.

55. The Contractor shall disclose the Confidential Information only to those of its officers and employees to whom, and to the extent to which, such disclosure is necessary for the purposes contemplated under the Contract, including but not limited to, Staff and Contractor Parties, and to procure that such parties are made aware of and agree in writing to observe the obligations in this Condition.

56. The provisions of this Condition shall not apply to information which:

56.1. is or comes into the public domain through no fault of the Contractor;

56.2. is lawfully received by the Contractor from a third party free of any obligation of confidence at the time of its disclosure;

56.3. is independently developed by the Contractor;

56.4. is required by law, by court, by regulator or governmental order to be disclosed provided, however, that the Contractor will where legally permissible promptly notify the Authority of such requirements and shall take reasonable steps to coordinate with the Authority in contesting or limiting such requirement or in protecting the Authority's rights prior to disclosure;

56.5. the Authority requires to obtain in relation to Contractors who are individuals such as references sought from banks, existing or past clients, or other referees proposed by the Contractor.

The burden of proving that any of the foregoing exceptions apply shall be upon the recipient.

57. The obligations under these clauses 52 to 57 shall survive the variation, expiry or termination of the Contract.

Schedule 7

Contractor sensitive information

This page comprises Schedule 7 to the Framework Agreement between the Authority and XXX.

Type of information specified as Contractor Sensitive Information	Reason why information is sensitive	Duration of sensitivity
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Schedule 8

Exit Strategy

This and the following 6 pages comprise Schedule 8 to the Framework Agreement between the Authority and XXX.

Definitions

1. In this Exit Strategy, the following words shall have the following meanings:
 - 1.1. **“Audited body”** means the body to which the Contractor has been appointed.
 - 1.2. **“Authority”** means the Auditor General for Scotland and Accounts Commission, acting through Audit Scotland.
 - 1.3. **“Contractor”** means XXX.
 - 1.4. **“Commencement Date”** has the meaning given in Framework Agreement clause 9.
 - 1.5. **“Exit Plan”** means the exit management plan developed by the Contractor and approved by the Authority in accordance with Clauses 125 to 129 (Exit Management) of the Framework Agreement and this Schedule.
 - 1.6. **“Framework Agreement”** or **“Agreement”** means this framework agreement between the Authority and the Contractor consisting of 159 clauses and 10 Schedules.
 - 1.7. **“Replacement Contractor”** means the Contractor appointed to an audited body for the period immediately succeeding the last period of the Contractor’s term of appointment.

Introduction

2. This schedule of the framework agreement sets out the requirements of the Contractor when exiting the role of appointed auditor for a public body on behalf of the Authority. It sets out the requirement for an exit plan and details the handover arrangements required, whether exiting at the end of the appointment at completion of the 2026/27 audit or during the appointment period.
3. Rotating the appointment of the external auditor may present risks for the Audited body and both the Contractor and Replacement Contractor if not properly managed. Contractors can minimise disruption to all parties and maximise the transfer of knowledge of the audited body by working in partnership with the Authority and other auditors.

Exit Plan

4. The Contractor shall, within three months of the Commencement Date, submit an Exit Plan to the Authority which complies with the requirements set out in this schedule to the Framework Agreement.
5. The Authority shall provide to the Contractor the Authority's comments on the plan within one (1) month of the Authority's receipt of the plan. The Contractor shall take into account the comments and suggestions of the Authority and shall issue the final version of the Exit Plan to the Authority within ten (10) Working Days of receipt of the Authority's comments.
6. The Contractor and the Authority shall use their reasonable endeavours to agree the contents of the Exit Plan. If the parties are unable to agree the contents of the Exit Plan within twenty working days of issue of the final version to the Authority, either party may refer the dispute to the dispute resolution procedure (Clauses 101 to 103 of the Framework agreement).
7. The Exit Plan shall include or address the matters specified in Clause 126 of the Framework Agreement.
8. The Exit Plan shall:
 - set out the obligations of the Contractor and Authority to:
 - facilitate the transition of the Services from the Contractor to a Replacement Contractor and/or Audit Scotland, or
 - allow the Authority to undertake the competitive re-bid of a framework agreement.
 - detail activities necessary to support any Replacement Contractor or the Authority in carrying out any necessary due diligence relating to all or part of the Services;
 - support the Replacement Contractor or the Authority during their preparation of any relevant plan for the transition of the audit to the Replacement Contractor or Authority, including prior to and during such transition period;
 - detail how the Services will transfer to the Replacement Contractor and/or Audit Scotland including details of the processes, documentation, data transfer, systems migration, and security implications;
 - make provision for access by Audit Scotland or any Replacement Contractor to relevant information, systems and personnel;
 - provide a timetable and identify critical issues for carrying out the provisions of the Exit Plan;
 - detail the management structure to be put in place and employed during the deployment of the Exit Plan (if applicable).

- provide details of the Exit Management to be provided by the Contractor prior to the Exit Management Date;
- make provision for all other necessary activities to support the preparation for, and execution of, a smooth and orderly Exit Management and transfer of all or part of the Services to either a Replacement Contractor or the Authority.

9. The arrangements set out in the Exit Plan shall ensure that there is no disruption in the supply of the Services and no deterioration in the quality of delivery of the Services;

10. The Contractor shall throughout the period of the Agreement review, maintain and continuously update the Exit Plan. As a minimum, the Contractor shall review and, if appropriate, update the Exit Plan:

- in the first month of each Contract Year (commencing with the second Contract Year); and
- following any major change to the Services under the Agreement.

11. The Contractor shall implement, and shall comply with its obligations in the Exit Plan:

- From the date of receipt by either Party of a notice of termination; or
- twelve (12) months prior to the planned end date of the contract appointment;

12. The Contractor shall ensure that it is able to implement the provisions of the Exit Plan at any time in accordance with its contract.

13. No amendment of the Exit Plan shall be made without prior written consent of the Authority.

Post termination

14. The Contractor will take all reasonable steps to assist any Replacement Contractor appointed to the same audited bodies as the Contractor. Such assistance is described in the section below, Auditor Cooperation.

15. In accordance with clauses 149 to 154 (Consequences of Expiry or Termination), following the termination of the Framework Agreement the Contractor shall return to the Authority all Authority Property and Authority Protected Information in the Contractor's possession and destroy or delete any copies of Authority Protected Information (whether physical or electronic) in its possession, and a duly authorised officer of the Contractor shall certify that this has been done.

Auditor cooperation

16. At the end of the Contractor's appointment, the Contractor shall take all reasonable steps to assist any Replacement Contractor appointed to the audited body. Such assistance shall include making available to the

Replacement Contractor any permanent information about the bodies and about the audit that the Replacement Contractor and Contractor believe would enhance the Authority's partnership working ethos.

17. Contractors and Replacement Contractors will work together to ensure that the knowledge built up by the Contractor during the course of the audit is passed on to the Replacement Contractor. Knowledge transfer should be accomplished by:

- Contractors providing principal reports to Replacement Contractors
- Contractors holding a briefing meeting with the Replacement Contractor
- Contractor providing Replacement Contractor access to working papers
- Contractor and Replacement Contractor agreeing on respective responsibilities during the handover period.

Principal reports

18. Contractors are required to provide principal reports to Replacement Contractors. Principal reports that should be shared include:

- Annual Audit Plan and Annual Audit Report
- reports on local studies and projects
- reports to management or interim reports including reports on accounting systems weaknesses
- other documents as appropriate, including copies of correspondence with members, officers, the public and others relating to the accounts and the audit
- grant claims and returns (local government and others as appropriate) for the last year prior to handover, including copies of grant claim reports.

Briefing meeting

19. Unless otherwise directed by the Authority, Contractors are required to provide a briefing that enables the Replacement Contractor to fully understand all relevant circumstances for the audit. Subjects to cover include, but are not limited to:

- the body's governance and management arrangements, financial systems and internal controls
- audit issues/risks, including wider-scope audit risks
- accounting and auditing timetables
- governance and culture within the body
- principal staff within the audited body

- auditor's approach to data analytics and information on where systems cannot provide key fields.

Access to working papers

20. Contractors should give access to working papers requested by the Replacement Contractor. Access is for the purpose of auditing the accounts and no other purpose.

21. The Authority will request that Replacement Contractors are specific about what papers they need to see. A blanket request for all working papers would not be appropriate or acceptable. Where a Contractor has concerns about the need to see certain papers, they should discuss this with the Replacement Contractor in the first place. Where disagreement remains, Contractors should contact the Authority.

22. The kind of documentation that might be requested includes:

- names of principal financial systems
- details of controls and weaknesses identified in the systems of internal control
- working papers related to identified audit significant risks
- working papers to provide audit comfort over opening balances
- evidence obtained in support of wider-scope audit conclusions
- details of follow-up work on implementing previous audit recommendations
- copies of recent complaints (and objections for local government sector audits) together with the audit response and any background information.

23. Contractors and Replacement Contractors should agree whether access includes providing copies of working papers or access to take notes, although any documentation originating with the audited body should be made available as either electronic or hard copies.

24. Contractors should be prepared to answer questions on a timely basis.

Completion requirements

25. Unless otherwise instructed by the Authority, the Contractor should complete all outstanding work related to the final year of their appointment.

26. However if, exceptionally, work cannot be completed within a reasonable timescale, the Contractor should agree with the Authority what work will be reallocated to the Replacement Contractor.

27. The Authority will consider requests for reallocation of outstanding work on the basis of whether the audit work would be more appropriately and efficiently undertaken by the Replacement Contractor. Where the Authority agrees to

reallocation of outstanding work, the Authority will consider the resource cost of any such reallocation and may adjust the Contractor's remuneration for any such reallocation if the work forms a normal part of the appointed audit.

28. In most cases, the audit will be fully complete at the date on which the audit opinion is signed and the Annual Audit Report is published so the Replacement Contractor can take over with no crossover. There may be circumstances, such as statutory reporting, where the Contractor may be required to retain some involvement after issuing the Annual Audit Report. Contractors should discuss with the Replacement Contractor and the Authority, any responsibilities that they retain beyond the signing of the accounts and publication of the Annual Audit Report.

Relevant Standards

29. Listed below are relevant standards, setting out the requirements for exiting an audit appointment.

ISCQ (UK) 1 Quality Control For Firms That Perform Audits And Reviews Of Financial Statements, And Other Assurance And Related Services Engagements

30. Paragraph 28-1 states:

"For audits of financial statements, where the auditor ceases to hold office as statutory auditor, or ceases to be eligible for appointment as a statutory auditor, the firm shall provide the successor statutory auditor with access to all relevant information concerning the entity, including information concerning the most recent audit."

31. Although this requirement relates specifically to audits carried out under the Companies Act, the requirements shall be deemed to apply to audits carried out under appointment by the Auditor General or Accounts Commission.

32. ISA 510 refers to requiring outgoing auditors to provide the auditor with access to all relevant information concerning the entity, including information concerning the most recent audit.

ISA (UK) 300 Planning an audit of financial statements

33. Paragraph 13 states:

"The auditor shall undertake the following activities prior to starting an initial audit:

...(b) Communicating with the predecessor auditor, where there has been a change of auditors, in compliance with relevant ethical requirements. (Ref: Para. A22)"

34. Paragraph A20 states:

"... For an initial audit engagement, additional matters the auditor may consider in establishing the overall audit strategy and audit plan include the following:

- Unless prohibited by law or regulation, arrangements to be made with the predecessor auditor, for example, to review the predecessor auditor's working papers."

ISA (UK) 510 Initial Audit Engagements – Opening Balances

35. Paragraph 5 states:

"The auditor shall read the most recent financial statements, if any, and the predecessor auditor's report thereon, if any, for information relevant to opening balances, including disclosures."

36. Paragraph 6 states:

"The auditor shall obtain sufficient appropriate audit evidence about whether the opening balances contain misstatements that materially affect the current period's financial statements by: (Ref: Para. A1–A2)

...(c) Performing one or more of the following: (Ref: Para. A3–A7)

(i) Where the prior year financial statements were audited, reviewing the predecessor auditor's working papers to obtain evidence regarding the opening balances;..."

37. Paragraph A4 states:

"If the prior period's financial statements were audited by a predecessor auditor, the auditor may be able to obtain sufficient appropriate audit evidence regarding the opening balances by reviewing the predecessor auditor's working papers. Whether such a review provides sufficient appropriate audit evidence is influenced by the professional competence and independence of the predecessor auditor."

Schedule 11

Cyber security requirements

This and the following 4 pages comprise Schedule 11 to the Framework Agreement between the Authority and XXX.

Definitions

1. The defined terms used in this Schedule 11 shall have the following meanings:

- 1.1. **“Authority”** means the Auditor General for Scotland and Accounts Commission, acting through Audit Scotland.
- 1.2. **“Contractor”** means XXX.
- 1.3. **“Cyber Security Incident”** means any thing, event, act or omission which gives, or may give, rise to:
 - unauthorised access to any information system, data or electronic communications network (including breach of an applicable security policy);
 - reduced integrity of an information system, data or electronic communications network;
 - unauthorised use of any information system or electronic communications network for the processing (including storing) of data;
 - disruption or change of the operation (including takeover of control, malicious disruption and/or denial of service) of an information system or electronic communications network;
 - unauthorised changes to firmware, software or hardware;
 - unauthorised destruction, damage, deletion or alteration of data residing in an information system or electronic communications network;
 - removal or limiting the availability of, or possibility to use, data residing in an information system or electronic communications network;
 - the appropriation, publication, dissemination or any other use of data by persons unauthorised to do so; or
 - a breach of the Computer Misuse Act 1990, the Network and Information Systems Regulations 2018, the UK GDPR or the Data Protection Act 2018, the Privacy and Electronic Communications

(EC Directive) Regulations 2003, the Communications Act 2003, the Official Secrets Act 1911 to 1989, or any other applicable legal requirements in connection with cybersecurity and/or privacy in connection with the Services and/or the Framework Agreement;

- 1.4. **“Cyber Security Requirements”** means the Authority’s requirements in connection with cyber security as set out in clauses 3. to 4 to this Schedule 11, and the Specification;
- 1.5. **“Good Industry Practice”** in relation to any undertaking and any circumstances, means the exercise of skill, diligence, prudence, foresight and judgment and the making of any expenditure that would reasonably be expected from a skilled person in the same type of undertaking under the same or similar circumstances.
- 1.6. **“ISO 27001”** is a specification for an information security management system (ISMS). An ISMS is a framework of policies and procedures that includes all legal, physical and technical controls involved in an organisation’s information risk management processes. It includes details for documentation, management responsibility, internal audits, continual improvement and corrective and preventive action. The ISO standard requires co-operation by all parts of an organisation and is independently audited and accredited.
- 1.7. **“IASME Governance Standards”** is an independent on-site audit of the level of information security provided by an organisation. IASME state that it offers a similar level of assurance to the ISO 27001 standard but is designed to be simpler and often cheaper for small and medium-sized organisations to implement. The standard includes all of the five Cyber Essentials technical topics and adds additional topics that mostly relate to people and processes, for example:
 - Risk assessment and management
 - Training and managing people
 - Change management
 - Monitoring
 - Backup
 - Incident response and business continuity

The Audited IASME Governance certificate builds on a self-assessment similar to the basic Cyber Essentials one.

Contractor’s warranty

2. The Contractor warrants and undertakes that it shall meet and comply with the Cyber Security Requirements in connection with the provision of the Services and the Framework Agreement (including in respect of any certification or accreditation).

Cyber security requirements

3. Contractors collect, store and process personal data as part of audit work. Based on the circumstances of audit, the Authority judges that ISO 27001 accreditation and certification (allowing also for equivalent standards) is the most appropriate to provide appropriate assurance. In order to avoid creating disproportionate barriers to entry for smaller Contractors, the Authority judges that IASME Governance Standards accreditation and certification by the 1st September 2023 is appropriate for Contractors with annual turnover below £100m.

4. The contractor shall meet the following requirements:

- ISO 27001 by the start of the appointment for Contractors with annual turnover greater than £100m, or
- Cyber Essentials Plus by the start of the appointment and ISO 27001 or IASME by 1st September 2023 for Contractors with annual turnover below £100m.

Contractor's obligations

5. The Contractor shall implement and maintain all security measures:

- 5.1.** as may be required under applicable laws (including the Network and Information Systems Regulations 2018);
- 5.2.** to enable it to discharge its obligations under this Schedule 11; and
- 5.3.** to ensure there are no Cyber Security Incidents

in all cases to the Authority's reasonable satisfaction and in accordance with Good Industry Practice.

6. The Contractor shall notify the Authority promptly of any changes in its ability to meet the Cyber Security Requirements, including any changes to certifications and accreditations.

Cyber security incidents

7. The Contractor shall notify the Authority as soon as practicable as soon as it knows or believes that a Cyber Security Incident has or may have taken place and within 3 working days where personal data is potentially involved and shall provide full details of the incident and any mitigation measures already taken and intended to be taken by it and (where applicable) any mitigation measures recommended by it to be taken by the Authority. Where such initial notification is not in writing, then the Contractor shall provide the Authority with a written notification setting out the details required under this clause 7. promptly and in any case within twelve (12) hours from the initial notification.

8. Following a Cyber Security Incident, the Contractor shall:

- 8.1.** use its best endeavours to mitigate the impact of the Cyber Security Incident;

- 8.2. investigate the Cyber Security Incident completely and promptly, and shall keep the Authority fully informed of the progress and findings of its investigation;
- 8.3. where required to do so, inform any applicable regulator of the Cyber Security Incident; and
- 8.4. take any action deemed necessary by the Authority in the circumstances, including complying with any additional security measures deemed appropriate by the Authority.

9. The Contractor shall perform its obligations under these clauses 7. to 9. at no additional charge to the Authority, unless it can show that the Cyber Security Incident was caused solely by an act or omission of the Authority.

Information and audit

10. Promptly upon request, the Contractor shall provide to the Authority such information and records in connection with the Contractor's obligations under this Schedule 11 as the Authority may request.

11. The Contractor agrees (and procures that its sub-contractors agree) that the Authority, its agents and its representatives may conduct such audits as are considered necessary by the Authority acting reasonably, including for the following purposes:

- 11.1. to ascertain the impact of any Cyber Security Incident;
- 11.2. to review and verify the integrity, confidentiality and security of any data relating to the Framework Agreement; or
- 11.3. to review the Contractor's and/or any sub-contractor's compliance with its obligations under this Schedule 11.

12. The Contractor shall (and shall ensure that any sub-contractor shall) provide the Authority, its agents and representatives with all reasonable co-operation and assistance in relation to audits, including:

- 12.1. all data and/or records requested by the Authority;
- 12.2. access to any relevant premises and to any equipment owned/controlled by the Contractor, any associated or group company and any sub-contractor and, where such premises and/or equipment are outwith the control of the Contractor, shall secure sufficient rights of access for the Authority, its agents and representatives as are necessary to allow audits to take place; and
- 12.3. access to any relevant individuals.

13. The Authority shall use its reasonable endeavours to:

- 13.1. provide at least 20 days' notice of its intention to conduct an audit (but is not obliged to do so in relation to a Cyber security incident); and

13.2. ensure that the conduct of each audit does not unreasonably disrupt the Contractor and/or sub-contractor or delay the performance of the Framework Agreement.

14. The parties shall bear their own respective costs and expenses incurred in respect of compliance with their obligations under these clauses 10. to 14. unless an audit identifies a breach of the terms of this Schedule 11 by the Contractor and/or sub-contractor, in which case the Contractor shall reimburse the Authority on demand for all the Authority's reasonable costs and expenses incurred in conducting the audit.

Breach of cyber security requirements

15. A breach of this Schedule 11 by the Contractor is a material breach for the purposes of clauses 114 to 119 (Termination Rights) of the Framework Agreement.

16. If the Contractor fails to comply with the provisions of this Schedule 11, the Authority may take any action it considers appropriate or necessary (and the Contractor shall comply with the Authority's requests in this respect), including:

- 16.1.** suspending the whole or any part of the Contractor's obligations under the Framework Agreement;
- 16.2.** requiring that specific sub-contractors connected with such breach be removed from their involvement with the Services and this Agreement and cease to have any access to the Purchaser's Protected Information and any Personal Data Processed in connection with the Services under the Framework Agreement;
- 16.3.** requesting the Contractor return and/or arrange the evidenced secure and permanent destruction of the Purchaser's Protected Information and any Personal Data Processed in connection with the Services under the Framework Agreement; and
- 16.4.** implementing additional or alternative measures, both technical and organisational, to protect and secure the Purchaser's Protected Information and any Personal Data Processed in connection with the Services under the Framework Agreement.